LIBRARY
SUPREME COURT, U.S.

Vol. I

TRANSCRIPT OF RECORD

(Pages 1 to 672)

Supreme Court of the United States

OCTOBER TERM, 1952

No. 374

THE TIMES-PICAYUNE PUBLISHING COMPANY, L. K. NICHOLSON, JOHN F. TIMS, JR., ET AL., APPELLANTS,

vs.

UNITED STATES OF AMERICA

No. 375

UNITED STATES OF AMERICA, APPELLANT,

vs.

THE TIMES-PICAYUNE PUBLISHING COMPANY, L. K. NICHOLSON, JOHN F. TIMS, JR., ET AL.

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA

FILED OCTOBER 3, 1952

Probable jurisdiction noted November 10, 1952

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. 374

THE TIMES-PICAYUNE PUBLISHING COMPANY, L. K. NICHOLSON, JOHN F. TIMS, JR., ET AL., APPELLANTS,

vs.

UNITED STATES OF AMERICA

No. 375

UNITED STATES OF AMERICA, APPELLANT,

vs.

THE TIMES-PICAYUNE PUBLISHING COMPANY, L. K. NICHOLSON, JOHN F. TIMS, JR., ET AL.

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA

VOL. I

INDEX

	Original	Print
Record from U.S.D.C. for the Eastern District of Louisiana, New Orleans Division	a	1
Caption (omitted in printing)	a	
Complaint	b	1
Answer	m	10
Transcript of trial	t	20
Appearances	t	20
Proceedings	1	20
Opening statement on behalf of plaintiff	1	20
Colloquy between court and counsel	13	28

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JAN. 12, 1953.

5440

	Original	Print
Record from U.S.D.C. for the Eastern District of Louisiana, New Orleans Division—Continued		
Transcript of trial—Continued		
Proceedings—Continued		
Testimony of Roland Ladreyt	19	33
Colloquy between court and counsel	94	84
Testimony of Vincent J. Kelley	95	85
Colloquy between court and counsel	145	119
Testimony of Aubrey F. Murray	151	123
Lawrence J. Frank	194	152
Colloquy between court and counsel	205	160
Testimony of Lawrence J. Frank (Resumed)	209	163
John F. Tims, Jr.	229	177
G. M. Philpott	364	169
Arthur Porter	371	174
Alvin E. Freifield	383	182
Oliver Einstein	404	196
John F. Tims, Jr. (Resumed)	409	300
Jack Seymour Margules	438	319
James Short	448	326
John G. Kelleher	464	337
Harry Johnson	490	354
Donald Harris	506	366
Harry Johnson (Recalled)	516	372
Charles Pumpian	526	378
Charles McGinnis	534	384
Robert Erath	540	388
Donald W. Scandlin	552	396
Edward Klein	560	402
Cornelius B. Donovan	567	407
Deposition of Vance D. Hicks	584	419
Phillip Marcuse	591	423
John F. Tims, Jr.	597	427
Colloquy between court and counsel	604	432
Testimony of John F. Tims, Jr. (Recalled)	608	435
Bedford McChesney	683	487
Bennie Jeansonne	691	493
Alvin M. Hussey	695	495
Victor Floyd Kirschman	704	501
Harrison F. Houghton	707	503
Colloquy between court and counsel	737	523
Testimony of Harrison F. Houghton (Resumed)	743	527
William N. Hurlbut	815	577
Ralph Nicholson	850	599
George W. Healy, Jr.	938	611
Irvin M. Ornet	973	635
Edgar Saux	984	642
Colloquy between court and counsel	993	648
Testimony of Frank Leeming	998	652
Thomas J. Adams	1009	659

VOL. II

	Original	Print
Record from U.S.D.C. for the Eastern District of Louisiana, New Orleans Division—Continued		
Transcript of trial—Continued		
Proceedings—Continued		
Testimony of—Continued		
Lawrence J. Frank, Jr. (Resumed)	1063	696
Colloquy between court and counsel	1070	701
Testimony of Joseph A. Ward	1075	704
Frank C. Allen	1079	707
Harrison F. Houghton (Recalled)	1102	719
Frank Leeming (Recalled)	1200	785
Harrison F. Houghton (Resumed)	1231	806
Colloquy between court and counsel	1376	905
Testimony of Harrison F. Houghton (Resumed)	1388	913
Frank Leeming (Recalled)	1461	962
Gordon M. Anderson	1466	966
Harrison F. Houghton (Resumed)	1497	986
Burt C. Guidroz	1498	987
Offers in evidence	1504	991
Motion to dismiss and ruling thereon	1511	995
Testimony of George Edward Conroy	1513	997
Forrest C. Buchanan	1614	1067
Colloquy between court and counsel	1647	1090
Testimony of George E. Conroy (Resumed)	1704	1093
George Healy (Recalled)	1726	1108
Roland Ladreyt (Recalled)	1732	1112
T. J. Adams (Recalled)	1753	1127
Donald W. Coleman	1761	1132
John F. Tims, Jr. (Recalled)	1786	1149
Harrison F. Houghton (Recalled)	1820	1171
Oliver Pepper	1839	1185
Roland Ladreyt (Recalled)	1894	1223
Donald W. Coleman (Recalled)	1898	1227
Reporter's certificate (omitted in printing)	1907	
Opinion, Christenberry, J.	1908	1233
Findings of fact	1930	1252
Conclusions of law	1940	1262
Final judgment	1942	1263
Petition of The Times-Picayune Publishing Company for appeal	1947	1266
Order allowing appeal	1948	1267
Citation (Omitted in printing)	1950	

	Original	Print
Record from U.S.D.C. for the Eastern District of Louisiana, New Orleans Division—Continued		
Assignments of errors	1951	1268
Service of appeal papers under Rule 12 (Omitted in printing)	1955	
Motion to have original records transmitted to the Supreme Court (Omitted in printing)	1958	
Order allowing transmittal of transcipt of testimony and exhibits to the Supreme Court	1960	1271
Prayer for relief	1961	1272
Supersedeas bond (Omitted in printing)	1962	
Praecipe of record (Omitted in printing)	1964	
Plaintiff's proposed final judgment	1966	1273
Petition for appeal of the United States of America	1973	1278
Order allowing appeal	1975	1279
Assignment of errors and prayer for reversal	1976	1279
Service of appeal papers under Rule 12 (Omitted in printing)	1978	
Citation on appeal (Omitted in printing)	1981	
Praecipe (Omitted in printing)	1982	
Clerk's certificate (Omitted in printing)	1984	
Motion for and order extending time within which to file record	1985	1281
Statement by the Times-Picayune Publishing Company of points to be relied upon and designation of parts of the record to be printed	1989	1282
Statement by the United States of points to be relied upon and designation of parts of record to be printed	1994	1283
Order noting probable jurisdiction	1998	1284

VOL. III

EXHIBITS—GOVERNMENT

G-6 thru 8—Financial statement of The Times Picayune Publishing Company for years ending December 31, 1947, 1948, 1949, prepared by Haskins and Sells	1999	1284
G-14—Letter dated April 1, 1947 from Roland Ladreyt to T. A. Lambert, Gebhardt Chili Powder Co.	2022	1297
G-15—Letter dated August 8, 1949 from Roland Ladreyt to I. L. Grant, National Biscuit Co.	2023	1298
G-16—Letter dated September 12, 1949 from Roland Ladreyt to M. J. Brennan, Kinsey Distillery Corp.	2026	1301
G-17—Letter dated November 26, 1949 from Roland Ladreyt to Frank Quinn, Standard Sales Co.	2028	1303
G-18—General rate card of The New Orleans Times-Picayune effective February 15, 1933	2030	1305

EXHIBITS—GOVERNMENT

Record from U.S.D.C. for the Eastern District of Louisiana, New Orleans Division—Continued	Original	Print
G-19 & 20—Pages 94 from Standard Rate and Data Service, dated August, 1935 and September, 1935	2032	1307
G-21 thru 29—General advertising rate card of The Times-Picayune Publishing Co. for years 1938, 1940, 1942, 1943, 1944, 1946, 1947, 1948, 1949	2034	1309
G-30—Office memorandum dated January 31, 1947 from Roland Ladreyt to Messrs. Murray, Swayze, Charlton, Display Desk, T. J. Adams, E. Kuhn, R. Muller	2052	1327
G-31—Letter dated October 21, 1949 from Roland Ladreyt to Jann & Kelley, Inc., with attachments	2053	1328
G-32—Letter dated January 17, 1950 from Roland Ladreyt to Jann & Kelley, Inc. enclosing a copy of advertising report	2061	1336
G-33—Announcement of rate card issued December 1, 1949 to advertising agencies	2064	1339
G-34—General advertising rate card of The Times-Picayune Publishing Company effective February 1, 1950	2065	1340
G-35—Letter dated December 2, 1949 from Foote, Cone & Belding to Roland Ladreyt	2067	1342
G-36—Letter dated December 8, 1949 from Al Paul Lefton Co. to Roland Ladreyt	2068	1343
G-37—Letter dated December 9, 1949 from J. D. Tarcher & Co. to Roland Ladreyt	2069	1344
G-38—Letter dated December 16, 1949 from Roland Ladreyt to Jann & Kelley, Inc.	2070	1345
G-39—Letter dated December 22, 1949 from Jann & Kelley to Roland Ladreyt	2071	1346
G-40—Letter dated December 28, 1949 from Roland Ladreyt to Jann & Kelley, Inc.	2072	1348
G-41—Letter dated January 12, 1950 from Roland Ladreyt to Jann & Kelley, Inc.	2073	1349
G-42—Letter dated February 28, 1950 from Roland Ladreyt to Jann & Kelley, Inc.	2075	1350
G-43—Letter dated March 9, 1950 from Nelson R. Swayze to Frank Ricca	2076	1351
G-44—Letter dated March 30, 1950 from W. R. Benefield to Lester Barnett	2078	1353
G-45—Memorandum dated November 26, 1949 from Vincent J. Kelley to all the offices of Jann & Kelley	2080	1355
G-46—Letter dated December 1, 1949 from Jann & Kelley, Inc. to John F. Tims, Jr.	2083	1358

EXHIBITS—GOVERNMENT

Record from U.S.D.C. for the Eastern District of Louisiana, New Orleans Division—Continued	Original	Print
G-47—Letter dated April 12, 1950 from Jann & Kelley, Inc. to John F. Tims, Jr.	2086	1361
G-48—Representatives Report, General Advertising Department, dated April 7, 1951 re Kaiser-Frazer Corporation	2088	1363
G-49—Memorandum dated November 17, 1949 from Jann & Kelley, Inc. to Roland Ladreyt	2090	1365
G-50—Memorandum dated January 26, 1950 from Jann & Kelley, Inc. to Roland Ladreyt	2091	1366
G-51—Letter dated March 3, 1950 from Jann & Kelley, Inc. to Roland Ladreyt	2092	1367
G-52—Copy of advertisement which appeared in Editor and Publisher Market Guide, 1950 edition	2094	1369
G-53—Copy of advertisement from the New Orleans States of November 4, 1949	2095	1370
G-54—Copy of advertisement from the New Orleans States of October 31, 1949	2096	1371
G-55—Copy of advertisement from the Times-Picayune of January 17, 1951 issue	2097	1372
G-56—Copy of advertisement from The Times-Picayune New Orleans States, October 9, 1949 issue	2098	1373
G-57—Copy of advertisement from the New Orleans States of November 3, 1951 issue	2099	1374
G-58—Copy of advertisement from the New Orleans States of February 22, 1951 issue	2100	1375
G-59—Copy of advertisement from the New Orleans States of November 10, 1949 issue	2101	1376
G-60—Office memorandum dated April 7, 1938 from Aubrey F. Murray to Mr. Tims	2102	1377
G-61—Office memorandum dated April 15, 1938 from John F. Tims, Jr. to Messrs. Adams, Davis & Muller	2103	1378
G-62—Office memorandum dated April 15, 1938 from John F. Tims, Jr. to Messrs. Blackburn, Murray, Swayze and Muller	2104	1379
G-63—Letter dated February 4, 1939 from The Times-Picayune Publishing Co. to Mr. Grover Rothenburg	2105	1380
G-64—Office memorandum dated September 2, 1939 from Fred Torres to Aubrey Murray	2107	1382
G-65—Letter dated September 5, 1939 from Aubrey F. Murray to Mr. G. V. Rothenburg	2108	1383
G-66—Office memorandum dated March 8, 1948 from John F. Tims, Jr. to Messrs. Murray, Ladreyt, Charlton, Swayze and Stephens	2109	1384

EXHIBITS—GOVERNMENT

Record from U.S.D.C. for the Eastern District of Louisiana, New Orleans Division—Continued	Original	Print
G-67—Office memorandum dated April 6, 1949 from R. E. Gough to Aubrey F. Murray	2110	1385
G-68—Letter dated July 12, 1948 from Aubrey F. Murray to the Jann & Kelley, Inc., Atlanta office	2111	1386
G-69—Letter dated November 19, 1949 from Aubrey F. Murray to Mr. Marcel J. Voorhies	2112	1387
G-70—Letter dated March 8, 1950 from Jann & Kelley, Inc. to A. F. Murray	2113	1388
G-71—Office memorandum dated April 18, 1950 from Aubrey F. Murray to John F. Tims, Jr.	2116	1391
G-80—The Times-Picayune Local Classified Fixed Space Contract effective February 1, 1933	2117	1392
G-81—The Times-Picayune New Orleans States Local Classified Gold Bond Contract effective March 15, 1935	2118	1393
G-82—The Times-Picayune New Orleans States Local Classified Real Estate Contract effective March 15, 1935	2119	1394
G-83—The Times-Picayune New Orleans States Local Classified Fixed Space Contract effective March 15, 1935	2120	1395
G-84—The Times-Picayune New Orleans States Local Classified Real Estate Contract, effective March 1, 1950	2121	1396
G-85—New Orleans States Sunday Times-Picayune New Orleans States "Over The River", Classified Contract, effective March 1, 1950	2123	1398
G-86—The Times-Picayune New Orleans States Local Classified Fixed Space Contract, effective March 1, 1950	2125	1400
G-87—The Times-Picayune New Orleans States Local Classified Gold Bond Contract effective March 1, 1950	2127	1402
G-88 thru 92—Retail Display Open Space Contract Rate Cards of The Times-Picayune Publishing Co. effective May 1, 1937, October 1, 1941, June 1, 1943, January 1, 1949 and March 1, 1950	2129	1404
G-93 & 94—Publisher's Statements—The Times-Picayune (Morning) and States (Evening) for six months ending September 30, 1950	2135	1410
G-95—Letter dated March 18, 1941 from John F. Tims, Jr. to Mr. C. C. Covey, National Stores Corp.	2139	1414
G-96—Office memorandum dated April 6, 1938 from E. F. Blackburn to John F. Tims, Jr.	2141	1416

EXHIBITS—GOVERNMENT

Record from U.S.D.C. for the Eastern District of Louisiana, New Orleans Division—Continued	Original	Print
G-97—Office memorandum dated April 4, 1938 from Nelson R. Swayze to John F. Tims, Jr.	2142	1417
G-98—Letter dated January 13, 1940 from John F. Tims, Jr. to Joseph Trexler, Edison Bros. Stores, Inc.	2144	1419
G-99—Letter dated December 8, 1949 from Jann & Kelley, Inc. to John F. Tims, Jr.	2145	1420
G-100—Letter dated November 30, 1949 from Foote, Cone & Belding to Jann & Kelley, Inc.	2148	1423
G-101—Contract dated August 15, 1941 with International Paper Sales Company, Inc.	2149	1424
G-102—Letter dated January 11, 1950 from Jann & Kelley, Inc. to John F. Tims, Jr.	2152	1427
G-103—Copy of the War Production Board verbatim transcript of meeting, Appeal Board, Times-Picayune Publishing Co. dated November 20, 1944, etc.	2154	1429
G-104 & 105—General rate cards of the Times-Picayune Publishing Co. effective May 1, 1948 and July 1, 1949	2174	1443
G-106A & B—Chart and data sheet of Classified Advertising Lineage carried by Times-Picayune, etc.	2176	1445
G-107 A & B—Chart and data sheet of General Display Advertising Lineage carried by Times-Picayune, etc.	2180	1449
G-108A & B—Chart and data sheet of Percentage of Total General display advertising lineage in evening New Orleans newspapers, etc.	2182	1451
G-109A & B and 110A & B—Charts and data sheets for 1949 and 1950 of Distribution of Total number of general display advertising accounts, etc.	2184	1453
G-112 & 113—Agreements for afternoon membership and morning membership in the Associated Press dated April 15, 1948	2188	1457
G-114—Contract by Times-Picayune Publishing Company with International News Service dated August 5, 1949	2190	1459
G-115—Contract with Chicago Times Syndicate, Inc. for feature, etc.	2191	1460
G-116—Agreement with N.E.A. Feature Service for use of material, etc.	2192	1462
G-117 thru 121—Service contracts with United Features Syndicate for specified features, etc.	2194	1463
G-122—Contract between Hearst Corporation for the feature, etc.	2199	1468

EXHIBITS—GOVERNMENT

Record from U.S.D.C. for the Eastern District of Louisiana, New Orleans Division—Continued	Original	Print
G-123—Agreement with the Register and Tribune Syndicate for wire report, etc.	2200	1469
G-124—Memorandum dated May 3, 1950 from George W. Healy, Jr. to Mr. Baddia J. Rashid	2201	1470
G-125A—Data sheet of Daily Automotive and Financial Display Advertising for 1949 and 1950, etc.	2206	1475
G-126—Report of Haskins & Sells on Recommendations for Improvement in Accounting System	2207	1477
G-141—Letter report dated June 4, 1940 from Ernst & Ernst to The Times-Picayune Publishing Co.	2215	1483
G-142—Photograph of a page from The New Orleans States for August 13, 1940 entitled "Fight"	2216	1485
G-144—Pages from issue of Times-Picayune dated July 18, 1933	2217	1486
G-145A thru 145E—Billing forms used by the Times-Picayune Publishing Co.	2220	1489
G-146 thru 148—Audit reports for the year 1949 made by the Audit Bureau of Circulations for Times Picayune (Morning), New Orleans, States, and New Orleans Item	2225	1494
G-149—Letter dated October 20, 1948 from Nelson R. Swayze to J. A. Goldsack, The Askin Stores, Inc.	2281	1550
G-152—Extract from The Times-Picayune Centennial Edition dated January 25, 1937	2282	1551
G-153—Basic list of daily newspapers published in 45 various cities in January 1929, etc.	2283	1554
G-154—Basic list of newspaper cities having publications or newspapers in which advertising was sold on a unit rate basis, etc.	2298	1569
G-155 & 156—Audit reports for the year 1950 made by the Audit Bureau of Circulations for Times-Picayune, morning, Sunday Times-Picayune-New Orleans States and New Orleans States	2308	1575

EXHIBITS—DEFENDANTS

D-3—List of clients of Foote, Cone & Belding	2356	1623
D-5—Chart showing how Times-Picayune Publishing Co. Employees are engaged	2359	1626
D-6—Chart showing how Times-Picayune Publishing Co. Equipment is employed	2360	1627

EXHIBITS—DEFENDANTS

Record from U.S.D.C. for the Eastern District of Louisiana, New Orleans Division—Continued	Original	Print
D-7 thru 13—Charts showing the Times-Picayune Publishing Co. Building by separate floors and their use	2361	1628
D-14—Statements of ownership, management and circulation required by Acts of Congress for the Times-Picayune, The Times-Picayune New Orleans States, New Orleans States, New Orleans Item, etc.	2368	1635
D-15—Chart showing percentage of Total General Display (National) Advertising Lineage in Sunday New Orleans newspapers	2372	1640
D-16—Data for Chart Percentage of Total General Display (National) Advertising Lineage in Sunday New Orleans newspapers, etc.	2373	1641
D-20—Statement of The Times-Picayune Publishing Company showing the income from various sources and operating departments to which it is applicable for the years 1948, 1949, 1950	2374	1642
D-21—Procedure flow chart showing present system on method of handling classified advertising, etc.	2375	1642
D-22—Procedure flow chart showing present system on method of handling general advertising, etc.	2376	1644

[fol. a] [Caption omitted]

[fol. b]

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA, NEW ORLEANS DIVISION

Civil No. 2797

UNITED STATES OF AMERICA, Plaintiff,

v.

THE TIMES-PICAYUNE PUBLISHING COMPANY, L. K. NICHOLSON, JOHN F. TIMS, JR., AUBREY F. MURRAY, and DONALD W. COLEMAN, Defendants

COMPLAINT—Filed June 14, 1950

The United States of America, plaintiff, by its attorneys, acting under the direction of the Attorney General of the United States, brings this action against the hereinafter named defendants and complains and alleges as follows:

I

Jurisdiction and Venue

1. This complaint is filed and this action is instituted against the defendants under Section 4 of the Act of Congress of July 2, 1890, c. 647, 26 Stat. 209, as amended, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies" commonly known as the Sherman Act, in order to prevent and restrain continuing violations by the defendants, as hereinafter alleged, of Sections 1 and 2 of that Act.

2. All defendants inhabit, transact business and are found within the New Orleans Division of the Eastern District of Louisiana.

[fol. c] II

Description of Defendants

3. The Times-Picayune Publishing Company is made a defendant herein. It is a corporation organized and existing

under and by virtue of the laws of the State of Louisiana. It has offices in the City of New Orleans, Orleans Parish, Louisiana, and publishes a morning daily newspaper known as The Times-Picayune, hereinafter referred to as "Times-Picayune", an evening daily newspaper known as The New Orleans States, hereinafter referred to as the "States", and a Sunday newspaper known as The Times-Picayune and New Orleans States, hereinafter referred to as the "Times-Picayune & States".

4. L. K. Nicholson, an individual residing in New Orleans, Louisiana, is made a defendant herein. He is President of the Times-Picayune Publishing Company.

5. John F. Tims, Jr., an individual residing in New Orleans, Louisiana, is made a defendant herein. He is Vice-President and Business Manager of the Times-Picayune Publishing Company.

6. Aubrey F. Murray, an individual residing in New Orleans, Louisiana, is made a defendant herein. He is Advertising Director of the Times-Picayune Publishing Company.

7. Donald W. Coleman, an individual residing in New Orleans, Louisiana, is made a defendant herein. He is Circulation Manager of the Times-Picayune Publishing Company.

III

Nature of Trade and Commerce

A. *Newspapers Involved*

8. The Times-Picayune is the only morning newspaper of general daily (excluding Sunday) circulation published in New Orleans, Louisiana. It is distributed and sold in New Orleans, elsewhere in the State of Louisiana, and in various other states of the United States. The Times-Picayune [fol. d] Publishing Company has published in New Orleans, Louisiana, continuously since prior to 1933, a Sunday newspaper which is in general circulation in New Orleans, elsewhere in the State of Louisiana, and in other states of the United States. During the period from approximately 1941 to approximately March 1950, the Times-Picayune Publishing Company published, distributed, and sold the only Sunday newspaper published in New Orleans, Louisiana.

9. The States was formerly published as an evening and Sunday newspaper by Daily States Publishing Company, Ltd. In approximately July 1933, the Times-Picayune Publishing Company purchased from the Daily States Publishing Company, Ltd., the name, good will, circulation and certain other rights and assets of the newspaper known as The New Orleans States. Since said purchase in 1933 the Times-Picayune Publishing Company has published in New Orleans, Louisiana, the States as an evening newspaper of general circulation in New Orleans, elsewhere in the State of Louisiana, and in other states of the United States. During the period from its purchase in 1933 by the Times-Picayune Publishing Company to the present time, there has not been a Sunday edition of the States published separately from the Sunday edition of the Times-Picayune; since 1933 the only Sunday newspaper published by the Times-Picayune Publishing Company has been the Times-Picayune & States.

10. The New Orleans Item, hereinafter referred to as the "Item", is a daily evening and Sunday newspaper of general circulation which competes with the newspapers published by the defendant the Times-Picayune Publishing Company. The Item is published in New Orleans, Louisiana, by The Item Company, and distributed and sold in that City, elsewhere in the State of Louisiana, and in other states of the United States. Prior to approximately 1941 the Item was published as a daily evening newspaper and as a Sunday newspaper. From approximately 1941 to approximately March 1950, the publication of a Sunday newspaper by the Item was discontinued. In 1949, The Item Company succeeded to The Item Company, Inc., which had theretofore published the Item. In approximately March 1950, The [fol. e] Item Company began publication of a Sunday newspaper in New Orleans, Louisiana, which has general circulation in New Orleans, elsewhere in the State of Louisiana, and in other states of the United States.

11. The newspapers hereinabove named are the only significant media of news, advertising and other information disseminated regularly for residents of New Orleans, Louisiana, through the publication and circulation of newspapers.

B. *Circulation of Newspapers Involved*

12. In the year 1949 the daily average net paid circulation for each of the newspapers of general circulation in New Orleans was approximately as follows: Times-Picayune, 174,819; States, 95,298; Item, 97,242; Times-Picayune & States, 283,540. Of these totals the daily average net circulation of each of the named newspapers distributed and sold in states other than the State of Louisiana and in foreign countries in the year 1949 was approximately as follows: Times-Picayune, 17,545; Times-Picayune & States, 41,303; States, 4,826; Item, 4,808.

C. *News and Advertising*

13. A substantial amount of news and other information is gathered from all parts of the United States and other countries, and is distributed and delivered by various means in interstate and foreign commerce to the publishers of the Times-Picayune, the States, the Item and the Times-Picayune & States in New Orleans, Louisiana. These newspapers distribute and disseminate this news to persons in New Orleans, Louisiana, elsewhere in the State of Louisiana, and also to persons outside the State of Louisiana by truck, airplane, railroads and the United States Mail.

[fol. f] 14. Advertising at compensatory rates is essential to the operation of the Times-Picayune, the States, the Item and the Times-Picayune & States. Approximately 98 per cent of the total operating revenue of these newspapers is derived from circulation and advertising. Advertising in these newspapers is commonly divided into three principal classifications, namely, classified, local display and general, and is hereinafter referred to by those classes.

15. The Times-Picayune, the States, the Item and the Times-Picayune & States, in arranging for advertisements, cause a continuous flow in interstate commerce of substantial amounts of advertising copy, mats, cuts, contracts and checks between the advertisers and the newspaper publishers. These newspapers distribute and disseminate such advertising to persons in New Orleans and elsewhere in the State of Louisiana, and also to persons outside the State of Louisiana.

D. *Supplies*

16. Substantial amounts of newsprint paper, ink and other materials are manufactured in various places in the United States, and foreign countries, and are shipped in interstate commerce to the Times-Picayune, the States, the Item, and the Times-Picayune & States for use in their publication.

E. *Nationally Advertised Products.*

17. Newspaper advertising is essential in developing, maintaining and extending a market for the sale of goods and services. A large variety and substantial amounts of goods and services produced and distributed by persons located in the various states of the United States, other than Louisiana, are advertised and offered for sale in Louisiana by means of advertisements published in the Times-Picayune, the States, the Item, and the Times-Picayune & States. Sales of such products and services are made in interstate commerce to purchasers in New [fol. g] Orleans, Louisiana, and vicinity as a result of advertisements published in these newspapers. Sales of other such products and services are made in interstate commerce to purchasers in states other than the State of Louisiana as a result of advertisements in these newspapers by advertisers located in New Orleans, Louisiana.

IV

Offenses Charged

18. Since 1935 defendant the Times-Picayune Publishing Company has entered into and is now a party to a series of contracts with its advertisers in unreasonable restraint of the above-described interstate trade and commerce in newspapers, in the dissemination of news and advertising, in supplies, and in nationally advertised products in violation of Section 1 of the Sherman Act.

19. Commencing approximately in the year 1933 and continuously thereafter to the date of the filing of this complaint, the defendants and others to the plaintiff unknown, have been engaged in a combination and conspiracy in unreasonable restraint of the above-described interstate trade and commerce in newspapers, in the dissemination

of news and advertising, in supplies, and in nationally advertised products, in violation of Section 1 of the Sherman Act.

20. Commencing approximately in the year 1933, and continuously thereafter to the date of the filing of this complaint, the defendants and others to the plaintiff unknown, have been engaged in a combination and conspiracy to monopolize the above-described interstate trade and commerce in newspapers and in the dissemination of news and advertising in violation of Section 2 of the Sherman Act.

21. Commencing approximately in the year 1933, and continuously thereafter to the date of the filing of this complaint, the defendants have been engaged in an attempt to monopolize the above-described interstate trade and commerce in newspapers and in the dissemination of news and [fol. h] advertising in violation of Section 2 of the Sherman Act.

22. The defendants threaten to and will continue said offenses unless the relief hereinafter prayed for in this complaint is granted.

23. Pursuant to the aforesaid combinations and conspiracies to restrain and to monopolize, and in an attempt to monopolize the aforesaid trade and commerce, the defendants, among other things:

(a) In 1933 caused the defendant the Times-Picayune Publishing Company to acquire a newspaper in New Orleans, Louisiana, which competed with said defendant, under restrictive covenants in order to prevent competition;

(b) In or about 1941 caused the defendant the Times-Picayune Publishing Company to enter into an agreement with a competitor under the terms of which the competitor agreed to discontinue publishing a Sunday newspaper in the City of New Orleans, Louisiana;

(c) Since in or about 1935 required advertisers using classified advertisements to contract to purchase and to purchase such advertisements in the Times-Picayune and States as a unit at combination rates and refused to sell such advertising in the morning or evening newspapers as a separate publication;

(d) Since in or about 1935 induced advertisers to

advertise in the States by providing in connection with contracts for local display advertising that any advertiser contracting for lineage in the Times-Picayune and the Times-Picayune & States will be billed for any advertising in the States during the contract period at the States' rate but based upon the lineage con-
[fol. i] tracted for in the Times-Picayune or the Times-Picayune & States; however, the lineage carried in the States will not be credited to the total lineage contracted for in the Times-Picayune or the Times-Picayune & States;

(e) From in or about January 1944 until February, 1950, required advertisers, in order to obtain a reduced rate on general advertising in excess of 10,000 lines, to contract to purchase and to purchase such advertisements in excess of 10,000 lines in a combination of the Times-Picayune and States or in a combination of the Times-Picayune and the Times-Picayune & States;

(f) Since February 1950 required advertisers to contract to purchase and to purchase general advertising in the Times-Picayune and States as a unit at combination rates and refused to sell such advertising in the morning or evening newspapers as a separate publication;

(g) Since in or about June 1949 coerced and otherwise induced newspaper vendors in New Orleans, Louisiana, to discontinue and refrain from the sale and distribution of newspapers published by The Item Company by refusing to permit said vendors to sell newspapers published by defendant the Times-Picayune Publishing Company unless such vendors discontinued or refused to sell and deliver newspapers published by The Item Company and by other means;

(h) Used the dominant advantage in New Orleans, Louisiana, of the Times-Picayune to injure and destroy the competition of a Sunday newspaper and an evening newspaper with the Times-Picayune & States and the States, respectively:

[fol. j] (1) By doing the things alleged in subparagraphs (a) to (g) of this paragraph;

(2) By using the income from the Times-Picayune to offset the losses or reductions in profits of the States incident to arbitrarily low rates for advertising carried in the States; and

(3) By increasing the pages of the States at increased cost of publication without correspondingly increased revenue for the purpose of inducing and forcing circulation and advertising from the Item to the States, and using income from the publication of the Times-Picayune to offset the losses or reductions in profits of the States incident thereto.

24. The illegal conduct alleged in paragraph 18 of this complaint consisted of defendant the Times-Picayune Publishing Company entering into those contracts with its advertisers described in subparagraphs (c), (d), (e) and (f) of paragraph 23.

V

Effects

25. The aforesaid offenses have had the following effects, among others:

(a) To restrain the aforesaid trade and commerce among the several states in newspapers published in New Orleans, Louisiana, and in the dissemination of news and advertising, in supplies, and in nationally advertised products;

(b) To monopolize the aforesaid trade and commerce among the several states in newspapers published in New Orleans, Louisiana, and in the dissemination of news and advertising;

(c) To compel advertisers in the Times-Picayune to refrain from advertising in newspapers published by The Item Company;

(d) To deprive advertisers in the Times-Picayune of the opportunity to freely select other newspapers in [fol. k] which to advertise;

(e) To exclude newspapers competing with newspapers published by the Times-Picayune Publishing Company from a substantial part of the trade and com-

merce among the several states in the advertising hereinbefore described;

(f) To irreparably injure competitors of the Times-Picayune Publishing Company in the operation of their businesses as a result of their inability to freely compete for and obtain advertising contracts from those persons who advertise in the Times-Picayune; and

(g) To deny to advertisers free access to channels of advertising in New Orleans, Louisiana.

Prayer

Wherefore, plaintiff prays:

1. That the Court adjudge and decree that the defendants have combined and conspired to restrain and to monopolize and have attempted to monopolize interstate trade and commerce in violation of Sections 1 and 2 of the Sherman Act.

2. That the Court adjudge and decree that the defendant the Times-Picayune Publishing Company has contracted in restraint of interstate trade and commerce in violation of Section 1 of the Sherman Act.

[fol. 1] 3. That the Court grant such relief as it deems appropriate and necessary to prevent the defendants, jointly and severally, from continuing to violate Sections 1 and 2 of the Sherman Act, and to dissipate the effects and to prevent a recurrence of their unlawful conduct.

4. That the plaintiff recover its taxable costs.

Dated: June 14, 1950.

(S.) J. Howard McGrath, Attorney General. (S.) Herbert A. Bergson, Assistant Attorney General. (S.) John N. McKay, United States Attorney, Room 237, Post Office Bldg., New Orleans, La. (S.) Horace L. Flurry, (S.) George E. Leonard, (S.) George A. Keim, Trial Attorneys.

[fol. m] IN THE UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER—Filed September 27, 1950

Now into court, through their undersigned counsel, come The Times-Picayune Publishing Company, L. K. Nicholson, John F. Tims, Jr., Aubrey F. Murray and Donald W. Coleman, through their attorneys, Phelps, Dunbar, Marks & Claverie, and for answer to the complaint filed herein, say:

1

In answer to Paragraph 1 of plaintiff's complaint, defendants say:

They admit that this complaint is filed and this action is instituted against the defendants under Section 4 of the Act of Congress of July 2, 1890, c. 647, 26 Stat. 209, as amended, entitled "An act to protect trade and commerce against unlawful restraints and monopolies", commonly known as the Sherman Act, for the alleged purpose of preventing and restraining alleged continuing violations by the defendants, as thereinafter alleged of Sections 1 and 2 of said act.

They deny that any action on their part or on the part of any of them is or has been in violation of the Sherman Act.

2

Defendants admit the allegations of Paragraph 2 of the complaint.

3

In answer to the allegations contained in the 3rd paragraph of the complaint, defendants admit that The Times-Picayune Publishing Company, defendant herein, is a corporation organized and existing under and by virtue of the laws of the State of Louisiana, that it has offices in the City of New Orleans, Orleans Parish, Louisiana, and publishes its daily newspaper known in the morning edition as The Times-Picayune, in the afternoon edition as the New Orleans States, and on Sunday as The Times-Picayune-New Orleans States.

Except to the extent hereinabove specially admitted, de-

fendants deny the allegations of the 3rd paragraph of the complaint.

4

Defendants admit the allegations of the 4th, 5th, 6th and 7th paragraphs of the complaint, except that defendants aver that John F. Tims, Jr., and Donald W. Coleman are [fol. n] residents of the Parish of Jefferson, State of Louisiana.

5

Defendants admit the allegations of the 8th paragraph of the complaint, and further aver that The Item Company, Ltd., discontinued publication of its Sunday edition on July 27, 1941.

6

In answer to Paragraph 9 of plaintiff's complaint, defendants say:

They admit that the States was formerly published as a Sunday and evening newspaper by The Daily States Publishing Company, Ltd. They admit that on July 17, 1933, The Times-Picayune Publishing Company purchased from The Daily States Publishing Company, Ltd., the name, goodwill and circulation of the newspaper known as the New Orleans States, its contracts with advertisers, and also its contracts and rights to be furnished news, features and comics. They aver that since said purchase The Times-Picayune Publishing Company has published in New Orleans, Louisiana, in its own plant and with its own equipment, its daily newspaper known in the morning edition as The Times-Picayune, in the afternoon edition as the New Orleans States and on Sunday as The Times-Picayune-New Orleans States, and that said paper in all of its editions has a general circulation in New Orleans, elsewhere in Louisiana, and in other States of the United States.

Except to the extent hereinabove specially admitted, defendants deny the allegations of the 9th paragraph of the complaint.

7

In answer to the allegations contained in the 10th paragraph of the complaint, defendants say:

They admit that the New Orleans Item, hereinafter referred to as the "Item," is a newspaper of general circulation published as an afternoon newspaper and on Sunday morning, which competes with the newspaper published by The Times-Picayune Publishing Company. They also admit that the Item is published in New Orleans, Louisiana, by The Item Company; and is distributed and sold in that City, elsewhere in the State of Louisiana, and in other States of the United States. They aver that prior to December 12, 1924, the Item was published by The Item Company, Ltd., as an afternoon newspaper, under the name of the New Orleans Item, and as a Sunday newspaper under the name of the New Orleans Item; that on December 12, 1924, The Item Company, Ltd., also began the publication of a morning paper known as The Morning Tribune, and continued the publication of said morning newspaper until January 13, 1941; that The Item Company, Inc., successor to The Item Company, Ltd., discontinued the publication of its Sunday newspaper on July 27, 1941, and no Sunday newspaper was published from that time until March 5, 1950, when The Item Company, which had succeeded The Item Company, Inc., began publication of a Sunday newspaper in New Orleans, Louisiana, which had general circulation in New Orleans, Louisiana, elsewhere in the State of Louisiana, and in other States of the United States.

Except to the extent hereinabove specially admitted, defendants deny the allegations of the 10th paragraph of the complaint.

8

Defendants admit the allegations of the 11th paragraph of the complaint, but aver that advertising through publication and circulation of newspapers is only one of many media of advertising available for reaching residents of New Orleans, and that such other media include magazine, [fol. 6] radio, television, billboard, handbill, direct mail and streetcar advertising.

9

Defendants admit the allegations of the 12th and 13th paragraphs of the complaint.

10

In answer to the 14th paragraph of the complaint, defendants say:

Defendants admit that approximately ninety-eight percent (98%) of the total operating revenue of The Times-Picayune Publishing Company and of The Item Company, Ltd., is derived from circulation and advertising and that advertising in these newspapers is commonly divided into three principal classifications, namely; classified, local display and general.

Defendants aver that the successful operation of The Times-Picayune Publishing Company requires that the revenue derived from its advertising and circulation rates be compensatory.

Defendants further aver, on information and belief, that the successful operation of The Item Company, Ltd., requires that its revenue derived from advertising and circulation rates should also be compensatory.

Except to the extent hereinabove specially admitted, defendants deny the allegations of the 14th paragraph of the complaint.

11

In answer to the allegations contained in the 15th paragraph of the complaint, defendants say:

Defendants admit that The Times-Picayune Publishing Company, in arranging for advertisements in its various editions known as The Times-Picayune, the New Orleans States, and The Times-Picayune-New Orleans States, causes a continuous flow in interstate commerce of substantial amounts of advertising copy, maps, cuts, contracts and checks between the advertisers and the newspaper publisher.

Defendants aver on information and belief that the same is true as to The Item Company.

Defendants further admit that the aforesaid editions published by The Times-Picayune Publishing Company and

The Item Company distribute and disseminate such advertising to persons in New Orleans and elsewhere in the State of Louisiana, and also to persons outside the State of Louisiana.

Except to the extent hereinabove specially admitted, defendants deny the allegations of the 15th paragraph of the complaint.

12

In answer to the allegations contained in the 16th paragraph of the complaint, defendants say:

Defendants admit that substantial amounts of newsprint paper, ink and other materials are manufactured in various places in the United States and foreign countries, and are shipped in interstate commerce to The Times-Picayune Publishing Company and The Item Company for use in the various editions of their newspapers.

Except to the extent hereinabove specially admitted, defendants deny the allegations of the 16th paragraph of the complaint.

13

In answer to Paragraph 17 of the complaint, defendants say:

Defendants admit the allegations of Paragraph 17, of the complaint, except that defendants aver that newspaper advertising is helpful, rather than essential, in developing, maintaining and extending a market for the sale of goods and services.

14

Defendants deny the allegations of the 18th, 19th, 20th, 21st and 22nd paragraphs of the complaint.

15

In answer to the allegations contained in the 23rd para- [fol. p] graph of the complaint, defendants say:

Defendants deny that they have restrained, or that they have combined or conspired to restrain, or monopolize, or to attempt to monopolize, trade and commerce.

(a) Defendants admit that in 1933 The Times-Picayune Publishing Company acquired from The Daily States Pub-

lishing Company the name, goodwill and circulation of the newspaper known as the New Orleans States, which competed with the other newspapers in the City of New Orleans, its contracts with advertisers, and its contracts for the furnishing to it of news, features and comics. They deny that said contract contained any restrictive covenants in order to prevent competition. They admit that said contract contained a provision that The Daily States Publishing Company, Ltd., would not engage in the newspaper business in the City of New Orleans, or within fifty (50) miles thereof, for a period of ten (10) years from the date of said contract. They annex hereto and make a part hereof a copy of said contract, marked "Defendants 1" and aver that the covenants therein contained were entirely reasonable, legal and proper.

Defendants further aver that immediately prior to said acquisition of the New Orleans States, The Item Company, Ltd., which, as previously alleged, was already publishing morning, afternoon, and Sunday, having substantial circulation within the City of New Orleans, had actively attempted to acquire ownership of the New Orleans States and was engaged in negotiations for that purpose at the time of the acquisition of the New Orleans States by The Times-Picayune Publishing Company. Defendants further aver, on information and belief, that it was the intention of The Item Company, Ltd., to merge or consolidate the New Orleans States with the New Orleans Item (afternoon) so as to eliminate competition in the afternoon field in New Orleans.

(b) Defendants deny all of the allegations contained in Subparagraph (b) of Paragraph 23 of the complaint.

(c) Defendants admit that since about 1935 The Times-Picayune Publishing Company has required advertisers using classified advertisements to contract to purchase and to purchase such advertisements in its daily newspaper, known in the morning edition as The Times-Picayune and in the afternoon edition as the New Orleans States, as a unit, at combination rates and has refused to sell such advertisements in its morning or evening edition separately. Defendants aver that this is a general, accepted and justifiable trade practice pursued for many years without question throughout this Country by persons or corpora-

tions owning a paper published both in the morning and the afternoon, whether under the same or different names, and that the same practice was pursued by The Item Company, Ltd., throughout the period from December, 1924, to February, 1941, during which period it published a paper in the morning known as The Morning Tribune and in the afternoon as the New Orleans Item.

(d). Defendants admit the allegations of Subparagraph (d) of Paragraph 23, but aver that The Item Company, Ltd., from 1924 to 1941, the date of discontinuing its morning edition, pursued exactly the same practice as is shown by a copy of its form of contract, which is annexed hereto and made a part hereof as though set forth at length herein, marked "Defendants 2." Defendants aver that such practice is reasonable and proper.

[fol. q] (e) Defendants admit that from on or about January, 1940, until February, 1950, The Times-Picayune Publishing Company required advertisers, in order to obtain a reduced rate on general advertising in excess of 10,000 lines, to contract to purchase and to purchase such advertisements in excess of 10,000 lines in its morning edition known as The Times-Picayune and its afternoon edition known as the New Orleans States, or in a combination of its morning edition known as The Times-Picayune and its Sunday edition known as The Times-Picayune-New Orleans States.

Defendants further aver that this is a general, accepted and justifiable trade practice pursued for many years without question throughout this Country.

(f) Defendants admit the allegations of Subparagraph (f) of Paragraph 23 but aver that this is a general, accepted and justifiable trade practice pursued for many years without question throughout this Country by persons or corporations owning a paper published in the morning and in the afternoon, whether under the same or different names.

(g) Defendants admit that on or about June, 1949, a very limited number of news vendors in New Orleans who had previously been selling newspapers published both by The Times-Picayune Publishing Company and The Item Company, Inc., discontinued the handling of sales of both newspapers. Defendants aver that this was primarily the result

of a practice instituted by The Item Company, Inc., and continued by the Item Company in pursuance of a policy of restricting sales to vendors who gave preferential treatment to the sales of the New Orleans Item over the New Orleans States.

Defendants further aver that, purely as a countermeasure, and in order to obtain fair treatment from the vendors who were then handling both the New Orleans Item and the New Orleans States, defendants required certain vendors who had not been giving fair and equal treatment to the sales and distribution of the New Orleans States jointly with the New Orleans Item to elect whether (1) to give fair and equal treatment to the sales and distribution of the New Orleans States jointly with the New Orleans Item, or (2) to give up distribution of the New Orleans Item altogether, or (3) to give up distribution of the New Orleans States altogether.

Defendants further aver that in November, 1949, The Item Company announced its intention to commence publication on or about March 5, 1950, of a Sunday newspaper; that theretofore most of the comic features carried by the New Orleans Item in its daily edition had been distributed and disseminated to the residents of New Orleans through a publication known as New York Daily News; that the New York Daily News had been in turn distributed through newspaper vendors within and without the City of New Orleans who handled jointly the sale of the New Orleans Item and the New Orleans States; that the Louisiana News Company, acting as distributors for the New York Daily News, had previously entered into a contract with the employes of The Item Company, or its predecessor, pursuant to which the New York Daily News was sold and distributed through news vendors handling the New Orleans Item and the New Orleans States; that the Louisiana News Company, anticipating that The Item Company would discontinue distribution of the New York Daily News on or about the time of the commencement of its Sunday edition and in order to make provision for continued distribution of the [fol. r] New York Daily News served notice of cancellation of its said contract with the employes of The Item Company; that the Louisiana News Company thereafter entered into an arrangement for the distribution of the New York Daily

News through the employes of The Times-Picayune Publishing Company; that The Item Company in order to restrict as much as possible the sales and distribution of the New York Daily News, issued instructions to its vendors (who had formerly been distributing the New York Daily News under the supervision of the employees of the New Orleans Item, and who were then distributing the New York Daily News under the supervision of the employees of The Times-Picayune Publishing Company) that they could not continue to sell and distribute the New Orleans Item if they also continued to sell and distribute the New York Daily News; that The Times-Picayune Publishing Company, purely as a countermeasure, thereupon, in a very limited number of instances, instructed certain vendors to continue to distribute the New York Daily News, or give up sales and distribution for The Times-Picayune Publishing Company.

Defendants admit that from March, 1950, to June, 1950, the vendors handling the Sunday edition of The Times-Picayune Publishing Company were not permitted to handle same if they undertook also to handle the sale and distribution of the Sunday edition published by The Item Company, but aver that this policy was taken purely as a countermeasure and protection against the unreasonable and discriminatory policies and practices instituted by The Item Company, as aforesaid.

Defendants aver that during June, 1950, The Item Company discontinued in a large measure the unreasonable and discriminatory policies theretofore instituted by it. Thereupon, The Times-Picayune Publishing Company ceased to place any restrictions upon its vendors as to the sale by them of either the Sunday edition of the Item or the afternoon edition of the Item; and no such restrictions have existed since June, 1950.

(h) Defendants deny the allegations of Subparagraph (h) of Paragraph 23 of the complaint.

Except to the extent hereinabove specially admitted, defendants deny all of the allegations contained in Paragraph 23 of the complaint, and specially deny that they combined or conspired to cause, or did cause, The Times-Picayune Publishing Company to put into effect any of the practices complained of. They aver that any actions taken by them

have been in pursuance of the policies established by Leonard K. Nicholson as the President of said corporation.

16

Defendants deny the allegations of Paragraph 24, except to the extent hereinabove specially admitted, and specifically deny that their conduct was in any wise illegal.

17

Defendants deny the allegations contained in Paragraph 25 of the complaint.

18

Further answering, and as an affirmative defense, defendants say:

If the Sherman Act is to be construed as permitting the Courts of the United States to regulate the advertising or circulation rates of newspapers, or the size or content of newspapers, or to prohibit an individual or corporation publishing newspapers from charging one rate for advertising in all of its editions, morning and afternoon, whether published under the same or different names, then such [fol. 8] Sherman Act is unconstitutional, null and void, because it violates the provisions of the First Amendment to the Constitution of the United States that Congress shall make no law abridging the freedom of speech or of the press.

Wherefore, defendants pray that this its answer be deemed good and sufficient and that after due proceedings had, plaintiff's complaint be dismissed at its own costs; and for all general and equitable relief.

Phelps, Dunbar, Marks & Claverie. Esmond Phelps. Tenth Floor United Fruit Building, 321 St. Charles Street, New Orleans, Louisiana, Attorneys for Defendants.

Certificate of service (omitted in printing).

[fol. 1] IN UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA, NEW ORLEANS DIVISION

No. 2797 Civil Action

UNITED STATES OF AMERICA

versus

THE TIMES-PICAYUNE PUBLISHING COMPANY, L. K. NICHOLSON, JOHN F. TIMS, JR., AUBREY F. MURRAY, DONALD W. COLEMAN

Transcript of Trial

APPEARANCES:

Horace L. Flurry, Esq., Victor H. Kramer, Esq., George E. Leonard, Esq., Baddia J. Rashid, Esq., Fred D. Turnage, Esq., Antitrust Division, United States Department of Justice; 1401 Fairfax Trafficway, Kansas City 15, Kansas; John N. McKay, Esq., United States Attorney, New Orleans, Louisiana, Attorneys for the Plaintiff.

Ashton Phelps, Esq., Charles E. Dunbar, Jr., Esq., Phelps, Dunbar, Marks & Claverie, United Fruit Building, New Orleans, Louisiana; Henry N. Ess, Esq., James C. Wilson, Esq., C. A. Peterson, Esq., Watson, Ess, Whittaker, Marshall & Enggas, 1500 Dierks Building, Kansas City, Missouri, Attorneys for the Defendants.

[fol. 1] PROCEEDINGS OF APRIL 30, 1951

The Court: Are you ready to proceed, gentlemen?

OPENING STATEMENT ON BEHALF OF PLAINTIFF

Mr. Flurry: May it please the Court, in view of the fact that we have held several pre-trial conferences and several briefs have been filed before the Court, which have thrown considerable light upon the issues of fact and law involved in this case, I shall undertake to abbreviate my statements in this opening statement.

The complaint charges The Times-Picayune Publishing Company and four of its officers and employees who appear to be the most prominent in its operations with four of-

fenses under Sections 1 and 2 of the Sherman Act. The first charge is that the Publishing Company, and no other defendant, has entered into a series of contracts in unreasonable restraint of trade and commerce in newspapers in the dissemination of news and advertising in supplies and in nationally advertised products.

We have heretofore contended before Your Honor, on the Motion for Summary Judgment, that the contracts are per se illegal. Your Honor has ruled upon that subject and we, of course, recognize Your Honor's decision. We have not since Your Honor's decision, and we do not intend on this trial, to contend upon the per se theory as to those contracts, although the Government, of course, does not waive that position and reserves it expressly.

We believe that the evidence will show that the contracts are in unreasonable restraint of the trade alleged by virtue of their effect upon competition in the newspaper business in New Orleans and their effect upon advertisers in New Orleans newspapers.

[fol. 2] That evidence will consist principally of testimony of witnesses, showing the result of the combination advertising rates of the defendant Publishing Company brought to pass with respect to the commerce of the Item and the commerce of the advertisers.

We also will undertake to demonstrate to the Court the unreasonable effect of the contracts by certain charts and tabulations made from data contained in records covered by the stipulations between the attorneys in pre-trial conference, such as Media Records.

We also expect to present evidence which we believe will prove that the defendants knew and intended that the contracts have that effect upon their competition, although such proof is unnecessary under charge 1 in the complaint. This will be done because the same contracts are a part of the conduct alleged to be in violation of Section 2 of the Act. It may also be of some value to the Court under this particular charge in view of the inference of probability of effect which grows out of the doing of an act with the specific intent that it have that effect.

The second offense alleged is a combination and conspiracy to unreasonably restrain the same commerce as that alleged in the contract charge.

The third alleged offense is a combination and conspiracy to monopolize commerce in newspapers and in the dissemination of news and advertising.

The fourth is an attempt to monopolize that same commerce.

[fol. 3] There will be no specific evidence introduced by the Government with respect to the two conspiracy counts in addition to that presented in connection with the contract charge and the attempt to monopolize.

We call the Court's attention to the difference in the allegation of the interstate commerce affected in the two counts under Section 2 of the Sherman Act and the two counts under Section 1 of the Sherman Act. The Section 2 counts refer to only the commerce in newspapers and in the dissemination of news and advertising.

In other words, there is no charge that the defendants, under charges 3 and 4, have conspired or attempted to monopolize the commerce in supplies or in nationally advertised products, whereas, under the first two counts that commerce is alleged to have been affected.

The evidence on interstate commerce will be brief in view of the defendants' answer admitting the existence of a substantial amount of such commerce. Of course, there will be considerable evidence of the interstate commerce and the amount of that commerce incidentally revealed by the proof of other issues, such as the amount of lineage advertising, including national advertising, circulation figures on newspapers, and newsprint used.

The only issue as to interstate commerce under the evidence will be, as we see it, whether the defendants' conduct constitutes an undue restraint of that commerce or a conspiracy attempt to monopolize it.

[fol. 4] The evidence will show, and the answer admits, that prior to 1933 there were three newspapers, publishers of newspapers, of general circulation in New Orleans: They were the defendant publisher, the Item Company, Ltd., and The New Orleans States. In 1933, the Times-Picayune Publishing Company purchased the name, good will, circulation, feature rights, and advertising contracts of the States. The physical assets were not purchased. Following that time, to the present time, The Times-Picayune Publishing Company has published the New Orleans States, an

evening newspaper, and the Times-Picayune, morning and Sunday Times-Picayune, New Orleans States, according to the Government's evidence.

The Item Company, Ltd., published the Morning Tribune and the Item, evening and Sunday editions. The Morning Tribune was discontinued in January, 1941 and after the purchase of the Item by The Item Company, Inc., the Sunday Item was discontinued in July, 1941.

Since January, 1941, there has been no morning newspaper of general circulation in New Orleans other than the Times-Picayune, and since July, 1941, there has been no Sunday edition other than the Times-Picayune-New Orleans States, until March 5th, 1950, when The Item Company, which purchased the Item in July, 1949, began publication of a Sunday edition.

[fol. 5] Thus, prior to March 5, 1950, the only significant newspaper media in New Orleans since 1941 for the dissemination of news and advertising and other information has been the Item, the States, the Times-Picayune and the Sunday Times-Picayune, New Orleans States.

Not only was the Times-Picayune morning and Sunday the only such media in the morning and Sunday fields during that time, but the Times-Picayune has been the dominant daily and Sunday paper for many years.

We think the evidence will show that it has been in position to adopt and carry out almost any policy which it chose to do without jeopardizing its position, but enhancing its position and particularly in the advertising field.

We believe the evidence will show the effect of the use of that position on competition, since profits from advertising is the backbone of the profitable operation of the newspaper.

I might mention, incidentally that the defendants seemed to have changed their position with respect to that proposition in their answer to the complaint, which stated that compensatory rates were essential to the successful operation of the newspaper. They denied that it was essential.

In their notice to the Government as to the issues which they had expected to present evidence upon, they seemed to have taken the position in line with the Government's allegation in the complaint that such compensatory rates are essential.

[fol. 6] It will appear that considerably more revenue comes from advertising than from circulation and the two sources make up more than 98 percent of the total revenues of the newspaper. Thus, if the newspaper cannot compete for advertising, its chances of survival are, we believe, practically nil and its ability to survive is decreased as its ability to freely compete, if advertising is reduced.

We submit that the evidence heretofore mentioned will show that advertising contracts have had the effect of unduly restraining the competition of the Item in obtaining advertising, with a corresponding reduction in its ability to obtain advertising; therefore, the monopolistic position of the defendant company is relatively increased. In addition, the effect to be shown is also felt by the advertisers, because they are being denied the benefits of free competition. He is being forced to place his advertising through certain channels of commerce, without having freedom of choice of the channel to be used. He is unable to choose according to the merits of the different media.

Such restraints on competition and advertisers are imposed upon interstate commerce in the following ways: The flow of interstate commerce in advertising copy, mats, or cuts, contracts and checks between advertisers and newspapers is more and more directed and limited by the defendants' advertising practices to the channel of flow dictated by the defendants and to the exclusion of other channels.

Furthermore, commerce is burdened by the injury and [fol. 7] destruction of competition using those products.

In similar manner, the commerce and supplies, such as newsprint and ink, is directly burdened by acts and injure and destroy outlets for those products moving from suppliers to newspapers. Many goods and services move in interstate commerce as a result of their being advertised in newspapers in New Orleans.

The flow of that commerce is directly burdened in the same manner as the commerce in automobiles moving from manufacturers to users by the limitations placed upon the advertising of automobiles sold by the dealers.

Interstate commerce in newspapers and in the dissemination of news and advertisers is directly injured or destroyed by the injury or destruction of competitors engaged

in that commerce. That, of course, has a clear effect of all upon interstate commerce.

We, therefore, submit that as a matter of law, if Your Honor is convinced from the evidence, as we believe that you will be, that the defendants have imposed unreasonable restrictions upon competition in their advertising, that interstate commerce has been unreasonably restrained.

In Paragraph XXIII of the complaint, the various acts of the defendants are described, from which we contend that the restraints arise.

I should like to refer briefly to those.

We rely upon the contract of the New Orleans States or The Times-Picayune Publishing Company with respect to [fol. 8] the purchase of the States in 1933 by The Times-Picayune Publishing Company and the restrictions alleged in Paragraph XXIII (a) of the complaint.

We also contend that the purchase of the competing States, with restrictions on its owners not to engage in the function of the newspaper within fifty miles of New Orleans for ten years, together with an additional restriction contained therein, shows the intent to monopolize and should be taken in connection with the other conduct.

The additional restriction was, in effect, a bar against the sellers' disposing of the plant or mechanical assets to anyone other than The Times-Picayune Publishing Company for nine months, although it was not then buying those assets.

Unless the purchaser from the States were bound by the States former owner not to use the properties in the publication of the newspaper within fifty miles of New Orleans and furthermore that in case a sale was made by the former owners of the States of that property, the Times-Picayune Publishing Company was given a first option to buy.

We expect that the evidence will show that The Times-Picayune Publishing Company and some of its officers were engaged within the *the* International Paper Company in eliminating the Sunday Item in 1941 from the Sunday field.

With respect to the advertising contracts, as alleged in Paragraph XXIII (c), (d), (e) and (f), we expect the evidence to show: First, that they did, in fact, restrain the commerce of the competitors and of advertisers, as I have

[fol. 9] heretofore stated; however, the evidence will further show intent to have that effect.

This evidence will consist of statements by those representing the defendant company in the conduct of its business and the circumstances under which some of the practices were started.

In other words, the defendants had in mind, not only the building of their own business, but also the weakening of the competitors' position. Under the evidence, there has been from time to time a stepping-up of the pressure through the use of forced combination rate. This began in 1935 with the forced combination rate on classified advertising.

About the same time, they put into use a new local contract. This provided that an advertiser who had a contract with the Times-Picayune in the morning could obtain space without any obligation as to amount of that space in the States at the volume rate of the States application only to the volume of the advertising carried in the morning Times-Picayune.

[fol. 10] Now obviously the contract provisions anticipate that the advertiser prefers and desires principally the morning paper because that is the paper in which he contracts for his principal volume. The very fact that the rate on any advertising which he may choose from time to time to carry in the States is based on the volume carried in the Times-Picayune morning instead of the States, clearly anticipates that the volume to be carried in the States will be less than the volume which he has contracted to carry in the Times-Picayune.

In 1940 they adopted a forced combination in part on general advertising. Under that, if an advertiser desired to run more than 10,000 lines of advertising per year in the morning, he was required to take the amount above 10,000 lines in combination morning and evening in order to obtain a rate lower than the 10,000 line rate in the morning paper. Soon after they learned of the Item's intention to publish a Sunday edition, the forced combination rate on general advertising in part was extended to cover all general advertising. It will be shown, we believe, that the alleged practices with respect to news boys were done without justification and shows the intention of the defendants to injure the

Item through interference with its circulation. With respect to paragraph XXIII-H of the complaint, we expect to use the same evidence of acts done to which I have already referred.

In brief, we will have shown, we believe, that those practices, both unreasonably restrained trade and were intended to have that effect. Lumped together, those practices constitute an abuse of their dominant advantage, [fol. 11] which dominance we expect to show. The other practices already discussed is added in the complaint under XXIII-H, the operation of the States which has competition at a loss and making the defendant company's profits in segments of its operation where no competing paper is published.

Further light upon the defendant's intention to injure competition by such conduct will be shown by evidence that they have taken even greater profits by higher rates in the segment in which no other paper existed and did not, likewise, increase rates in the States in spite of the poor showing in the operating profit of that paper. The operating results of the States will be shown by tabulations prepared from the records of the defendant company.

The greatest difference in the results reached in the Government's evidence and the reports of the company will be based upon expenses of which the defendants have made no allocation to the States, or as to which they have made obviously very little allocation to the States. It is apparent from such a practice and from the admission in pre-trial conference that their allocations were arbitrary and improper, that the defendants themselves were aware of the conditions of the States' operations when they were increasing rates elsewhere and keeping them down in the States.

The Court: Let me ask a question right there. I don't want to interrupt your trend of thought, but wouldn't the area in which they enjoy the monopoly, that is the morning field, be the one in which they would naturally raise the rates?

Mr. Flurry: We think that as a business man's conduct, [fol. 12] that probably would be the normal consequence, your Honor, but we say that under the Sherman Act it is not permissible. I should like also to make clear to your

Honor that my last statement with reference to the statement in pre-trial conference, that their allocations were arbitrary and improper, that by that we are not making any contention here that the mere fact of the way in which they kept their records, or their method of keeping their records, is illegal in any sense. The proposition that we are interested in is getting to the operating results of the morning paper as compared with the evening paper in order to determine whether or not——

The Court: But I was referring to your statement that they increased the morning rates so that they would not have to increase the States' rates. That is what it amounts to.

Mr. Flurry: That is what it amounts to, yes.

The Court: Of course, the answer might be—just thinking aloud—the answer might be that they couldn't raise it in the afternoon field because they had competition in the afternoon field and the reasonable place or the obvious place would be in the morning field where they had the monopoly.

Mr. Flurry: And that is the conduct which we say is illegal, under the Sherman Act. Now, I am not going into a detailed discussion of the evidence, as I said in the beginning, because I feel it is unnecessary to take your Honor's time, but I did wish to point out to the Court briefly the nature of the evidence and the purpose of the Government's case.

[fol. 13] Colloquy Between Court and Counsel

Mr. Phelps: May it please the Court, as counsel for the Government has already pointed out, we have had three pre-trial conferences in this case, we have had a number of arguments on legal points, we have briefed the various matters of law rather exhaustively, and for that reason, counsel for the defendants feel that it is not necessary or desirable at this time to make any further opening statement to the Court, other than to say that our repeated denials of the various charges made by the Government, are restated to the Court.

Mr. Flurry: May it please the Court, at this point I believe in our last pre-trial conference, it was understood that Mr. Phelps would advise the Government on this date

as to the state of health of Mr. Nicholson, L. K. Nicholson, as to whether or not he would be able to testify. We would now like to have a report on that.

Mr. Phelps: If the Court please, I cannot bring a doctor's certificate this morning, for the reason that the Government had advised me that they would call Mr. Nicholson, if at all, on the seventh, so that I thought I would bring the certificate for the day when they presumed they would need him. I understand, however, that his health is exactly the same and I am quite certain that the certificate will be in the same form as the last certificate that was submitted to the Government which they found satisfactorily. However, if the Government would like a certificate in advance of the seventh of May, I will certainly produce one as soon as I possibly can.

Mr. Flurry: If it please the Court, we are fully in accord with what Mr. Phelps has said, and we are perfectly willing [fol. 14] to take counsel's word on that and not require any doctor's certificate on it, and we anticipated that that would no doubt be the report. In view of those circumstances, we feel that the taking of Mr. Nicholson's testimony in some form is highly important to the Government. We do not feel that the taking of that testimony in the form of written interrogatories should in any way injure the health of Mr. Nicholson. It is my understanding that he has attended the National Publisher's Association convention and board meeting of the Associated Press. Under those circumstances and not being confined to his bed, it seems to me that it would not be an undue hardship on Mr. Nicholson to take his testimony by written interrogatories, and we should like to move the Court for the authority to take Mr. Nicholson's testimony by written interrogatories and that the Court set a date for that purpose before the Government completes its evidence in chief, which we anticipate will be approximately the middle of next week, that is, if we have no delays.

Mr. Phelps: If the Court please, I can't express an opinion on that without talking to his doctor about the matter. If the examination is to consist of a rather limited number of questions, as would appear to be the case, I know of very little that Mr. Nicholson could testify to, that the Government hasn't already taken testimony on, but if there

is to be a limited examination, it is possible that that would not be a burden, although, as I say, I am not in a position to state that without consultation with his doctor, because it had been my understanding that Mr. Nicholson would not [fol. 15] be called if the certificate is in the same general form as previously presented.

The Court: I think there is quite a difference in taking his testimony in open court and by written interrogatories. Can you make any statement concerning the attendance of Mr. Nicholson at these conventions which he referred to?

Mr. Phelps: It is a fact that he did go to New York. Whether that was against his doctor's advice or not, I don't know. I understand he was ill while he was up there, as a matter of fact.

The Court: I think conventions are apt to be more gruelling than giving testimony by written interrogatories, if this was the usual sort of convention that he attended.

Mr. Phelps: Under the circumstances, we have no objection if it is going to be a rather limited set of interrogatories.

The Court: I know that the Government counsel in this case are reasonable men. I think you gentlemen certainly agree with that, and I doubt that there is any intention to cross-examine Mr. Nicholson or to submit him to any gruelling examination. Now I think you gentlemen might agree on a date if you can. I take it, it will be necessary to suspend the trial during the time that it is being prepared. Do you gentlemen already have it prepared, your questions are prepared?

Mr. Flurry: We have prepared the interrogatories.

The Court: I see. Then no interruption is necessary.

Mr. Phelps: What is the situation on the date then?

Mr. Flurry: We, your Honor, are not particular about [fol. 16] the date except that we would like to have it before the conclusion of the Government's case, but if we can have it by, say, Tuesday or Wednesday of next week, I think that would be sufficient.

Mr. Phelps: That will be satisfactory, Your Honor.

Mr. Kramer: If the Court please, I thought we might have a brief discussion in order to obtain your Honor's views as to the most expeditious way of introducing docu-

mentary evidence. Perhaps if I describe what thoughts in the matter I had and then obtain the views of others——

I have here a looseleaf volume marked "Government's Exhibits," copies for the Court, which I thought we would hand you now and at the beginning of every court day, endeavor to give you all the documents that we would use for that day. The defendants have received copies of all letters that we propose to introduce and received notice that we were going to introduce some of the rate cards of the Times-Picayune Publishing Company, which, of course, they have in abundance, in order to avoid slowing down the proceedings unnecessarily I have here several copies of each of the rate cards we are going to use and I thought I would give you yours.

That takes me, if the Court please, to the question of numbering. We would suggest that we start with number 14 for identification, because the first 13 numbers were used in connection with the deposition of Mr. Tims.

The Court: With the label "G 14", the letter "G", in [fol. 17] addition to the number?

Mr. Kramer: Yes, sir. One other thought—I would appreciate a suggestion from your Honor—whether it would be helpful or confusing to mark a batch of documents in advance or whether we should do it as we go along.

The Court: I would think that it would be preferable to have it numbered in advance.

Mr. Kramer: Well, we would prefer that, but it is up to the defendants.

Mr. Phelps: As I understand it, the Government has already numbered the letters taken from the files and have used the numbers 1 to 14 in that circumstance, so we might try a different series in that respect.

Mr. Kramer: Mr. Phelps refers to the confusion in the numbers to the effect that we have inserted a number from 1 to 80, I think, in the top left hand corner. We could start with number 100 to avoid that confusion, just start a different series and call the first one "D" or deposition.

The Court: Do you propose to number these separately?

Mr. Kramer: Yes, sir.

The Court: And you will have them offered, by some witness, will you?

Mr. Kramer: That is right.

The Court: My suggestion is that all of the Government exhibits use the letter "G" in addition to the number. If [fol. 18] you use "D" for deposition, you may confuse it with defendant. What numbers have you used so far, 1 to 14?

Mr. Kramer: That is right, your Honor, but Mr. Phelps is pointing out the fact that he thinks it might prove confusing in that we have numbered all of these documents before we had them photostated merely for the purpose of identifying them for ourselves. I had no notion we would use those numbers at the trial. I deliberately put them on the left hand side of each document so as to reserve the right hand for the Clerk's stamp and his number.

The Court: Those numbers have no significance, now?

Mr. Kramer: No significance now except in helping us and the defendants find documents in a hurry as we use them.

Mr. Dunbar: Then why not follow the Court's suggestion here and put "G" after each one of these numbers?

The Court: Start with G-15. Just abandon the old numbers which is here on the left hand side and have it understood that the exhibit numbers will be——

Mr. Flurry: There is one difficulty about that, Your Honor. They will not be introduced in the order of those numbers.

The Court: It won't make any difference. Then all Government's exhibits, whether they are letters or any other sort of document, will be marked "G" with a consecutive number.

Mr. Kramer: That is right. Is it customary to have the Clerk mark the documents, or the Government counsel? We will be glad to mark them if that is the practice.

[fol. 19] The Court: You mark them. Keep a list, however, as you go along, as they are introduced.

Mr. Kramer: I will call Mr. Roland Ladreyt to the stand.

ROLAND LADREYT called as a witness by and on behalf of the Government, being first sworn, was examined and testified as follows:

Direct examination.

By Mr. Kramer:

Q. What is your name and address, please?

A. Roland Ladreyt. I live at 4435 DeMontlezan Street, New Orleans.

Q. What is your occupation, Mr. Ladreyt?

A. My occupation is selling general advertising for the Times-Picayune Publishing Company.

Q. What is the precise title of your job?

A. Manager of General Advertising.

Q. How long have you held that title, position?

A. Approximately since 1925.

Q. Can you tell me what the business of a firm named Jann & Kelley, Inc. is?

A. Their business is representing newspapers in the sale of general advertising in the national field.

Q. Do they represent the Times-Picayune Publishing Company in that respect?

[fol. 20] A. They do.

Q. How long have they been your national advertising representatives?

A. The firm of Jann & Kelley, as such, has been organized since the death of a former partner, I think in 1943. I may be mistaken, it may be earlier than that, but that is my memory of it. Its name was Jann & Kelley and before that it was—well, the same firm has been representing the Times-Picayune since I have been employed by the Times-Picayune.

Q. When did your employment with the Times-Picayune come in?

A. July, 1919-1920. I'm sorry.

Q. Does the Times-Picayune Publishing Company have a written contract with Jann & Kelley?

A. I am not in a position to answer that.

Q. You don't know?

A. I don't really know. It is a matter of management.

I don't have any negotiations with Jann & Kelley. I have nothing to do with their engagement or anything else.

Q. Do you know how they are paid?

A. They are paid on a commission basis.

Q. Would you briefly describe to the Court what your duties are as Manager of General Advertising for the Times-Picayune Publishing Company.

A. Well, primarily, it is the selling of advertising to [fol. 21] manufacturers for the Times-Picayune Publishing Company.

Q. Are you the only person who is in the General Advertising Department of the Times-Picayune Publishing Company?

A. No, we have other people in it.

Q. Well, how do your duties differ from the others in it?

A. Well, being the Manager, I give assignments to other members of the department, handle correspondence and look after the details of the office.

Q. To whom do you report? That is to say, who do you regard, or who is your immediate superior?

A. Mr. Aubrey Murray, Director of Advertising, is my immediate superior. However, I report frequently, more frequently, to Mr. Tims.

Q. Is that Mr. John F. Tims, Jr.?

A. John F. Tims, Jr., yes.

Q. Now, calling your attention to the years before 1950, while you were Manager of General Advertising for the Times-Picayune Publishing Company, were you also managing or looking out for the general advertising of the New Orleans States as well as the Times-Picayune?

A. I look out for the advertising of the Times-Picayune Publishing Company, morning and evening editions, yes, sir.

Q. And in your capacity as Manager of General Advertising prior to 1950, it was your duty, was it, to obtain or to endeavor to obtain general advertising for the Times-[fol. 22] Picayune Publishing Company's newspapers?

A. Yes.

Q. How many people worked under your direct supervision in 1949?

A. Well, if you don't mind my naming them, to assure

my memory, we had Mr. Fleming, Mr. Hebert, Mr. Delbarto, and three ladies in the department and one junior clerk.

Q. And that is all?

A. Un-huh.

Q. Would you say that you and your staff performed the greatest volume of work in obtaining general advertising for the Times-Picayune Publishing Company, or would you say that Jann & Kelley, Inc. did the lion's share of the work?

A. I think Jann & Kelley had more direct contacts with the national advertisers than we did here. We are not in a position to contact the national advertisers except on occasional trips to the national field, which I made from time to time, but Jann & Kelley handled all the direct contacts with the advertising agencies.

The Court: I wonder if we could get his definition of "general advertising"?

Mr. Kramer: Yes, sir.

Q. Would you please tell the court what you mean by "general advertising"?

A. General advertising is the advertising which is placed by a manufacturer or a wholesaler or a distributor, whether [fol. 23] or not it is over the signature of the advertiser particularly or not. It differs from retail—there are two classes of advertising in display: one is retail and one is general. General is normally termed national advertising, and the retail advertising is advertising that is placed over the signature of a single retailer.

Q. While you have testified that Jann & Kelley did the important or an important selling job of general advertising for the Times-Picayune Publishing Company, it is true, of course, is it not, that you and your staff also had important work to do in connection with obtaining general advertising?

A. Well, certainly not only obtaining it, but retaining it.

Q. Prior to 1950—now note the year, Mr. Ladreyt, prior to 1950—did any member of your staff devote himself exclusively to obtaining advertising, general advertising, for the States?

A. No.

Q. Did all or each member of your staff work in obtaining general advertising prior to 1950 for both papers?

A. Both morning and evening, yes.

Q. And the same was true, was it, as far back as 1933, when you acquired the States?

A. I am afraid you are going back a little too far for me.

Q. Well, so far back as you can remember, there never was any employee of yours, was there——.

A. As far as I can remember, and I am sure it applied in 1933, we had one staff for the sale of general advertising [fol. 24] for morning and evening.

Q. Now will you identify, that is to say, tell us what his job is, George W. Healy, Jr.?

A. I understand that he is Vice-President and Managing Editor of the morning edition.

Q. Now you refer to Mr. Healy as Managing Editor of the morning edition. What do you call that on the streets?

A. The morning edition is called the Times-Picayune.

Q. Will you tell us who William H. Fitzpatrick is?

A. William H. Fitzpatrick, I understand, is editor of the afternoon edition.

Q. And that is called what?

A. The New Orleans States.

Q. Who is Frank C. Allen?

A. Frank C. Allen is known as Managing Editor of the afternoon edition.

Q. Is there a man called Nelson R. Swayze in your organization?

A. Yes.

Q. Who is he?

A. He is the Advertising Manager of the afternoon edition.

Q. He is the Advertising Manager of the afternoon edition? And you call that the New Orleans States?

A. Right.

Q. Do you know a gentleman called W. R. Benefield?

[fol. 25] A. Yes.

Q. Who is he?

A. He is assistant handling retail advertising.

Q. For whom?

A. I am not in position to answer that definitely, whether

he devotes his time to both editions or not. I am not in the retail department, and, therefore, I can't say I devote much attention to what he does.

[fol. 26] By Mr. Kramer:

Q. I will try not, in view of that fact, Mr. Ladreyt, to ask you many questions about the retail situation.

Do you remember about what the year was when The Times-Picayune Publishing Company acquired the New Orleans States?

The Court: Let me interrupt you. When he says the "retail business" he has reference to the local display?

A. Retail display.

Mr. Kramer: I proposed subsequently to go into that.

The Court: All right.

By Mr. Kramer:

Q. Do you remember about when The Times-Picayune Publishing Company acquired the New Orleans States?

A. Yes. In July, 1933.

Q. Prior to the acquisition of the States by The Times-Picayune Publishing Company, do you remember whether the States was publishing a Sunday newspaper?

A. Yes, they were.

Q. How about a morning daily newspaper? Were they publishing one of those?

A. No.

Q. How about an evening daily newspaper?

A. Yes.

Q. Do you know whether or not the Times-Picayune Publishing Company elected, upon the purchase of the States, [fol. 27] to continue it as a separate newspaper?

A. Do I know whether they elected to?

Q. Do you know whether The Times-Picayune Publishing Company elected, upon the purchase of the States, to continue it as a separate newspaper? By "elected" I mean "chose" to.

A. I do not know what they elected to do. I just know what happened: That when they purchased the States it

became the afternoon edition of the Times-Picayune Publishing Company.

Q. Do I understand that you feel unable to answer the question "Yes" or "No?"

Mr. Phelps: I think the witness has answered the question quite satisfactorily, Mr. Kramer.

The Court: Proceed. Answer the question.

By Mr. Kramer:

Q. Do you think you can answer the question "Yes" or "No?"

A. Do I know whether they elected to?

Q. That is correct.

A. I do not know whether they elected to.

Q. That is all I wanted to know.

Mr. Ladreyt, I hand you Government Exhibit 14 and I ask you to tell me what it is.

A. This is a copy of a letter addressed to Mr. T. A. Lambert Gebhardt Chili Powder Company, San Antonio, Texas, by me on April 1, 1947.

Mr. Kramer: I offer this document in evidence, if the [fol. 28] Court please.

The Court: It will be admitted.

(The document was marked G-14 for identification and was received in evidence.)

Mr. Kramer: I would like to read it.

The Court: Very well.

(Mr. Kramer read Government Exhibit 14.)

Mr. Wilson: There is more of the letter, isn't there, Mr. Kramer?

Mr. Kramer: I can't read the rest of it entirely.

Mr. Wilson calls my attention to a pencilled note on the bottom of the letter which I will try to read as far as I can.

The Court: It is part of the exhibit.

By Mr. Kramer:

Q. Would you try to decipher that and tell me if you wrote it?

A. I am afraid my eyes are no better than anyone else's. It looks like a memorandum from one of the men in my department, as far as I can decipher. He says, "Gerde says he has not had a word from him," I guess, but that is all I can read. I can't decipher the rest of it. It is a report from one of the men in the department who contacted Mr. Gerde, and some comment on what Mr. Gerde had to say.

(Note: "Gerde says he has not had a word from him but thinks it is about time for Mr. Lambert to answer.")

Q. Mr. Ladreyt, I hand you Government's Exhibit 15 for [fol. 29] identification and ask you to tell me, if you know, what it is.

A. This is a letter written by me on August 8, 1949, to Mr. J. L. Grant, National Biscuit Company, Houston, Texas.

Mr. Kramer: I offer Government's Exhibit 15 in evidence.

The Court: Let it be admitted.

(The document was marked G-15 for identification and was received in evidence.)

(Mr. Kramer read Government Exhibit 15.)

By Mr. Kramer:

Q. Mr. Ladreyt, I hand you Government's Exhibit 16 for identification and ask you to tell me, if you can, what it is.

A. It is a copy of a letter written by me on September 12th, 1949, to Mr. M. J. Brennan, of the Kinsey Distillery Corporation, New Orleans, Louisiana.

Mr. Kramer: I offer Government's Exhibit 16 in evidence, if the Court please.

The Court: Let it be admitted.

(The document was marked G-16 for identification and was received in evidence.)

(Mr. Kramer read Government Exhibit 16.)

Mr. Kramer: Then there is a pencilled note on the bottom which I read, "9/12/49. Contacting Brennan regularly. Will follow through to see reaction."

[fol. 30] By Mr. Kramer:

Q. Mr. Ladreyt, I hand you Government's Exhibit for identification 17 and ask you to tell me, if you can, what it is.

A. This is a letter written by me on November 26, 1949, to Mr. Frank Quinn, of the Standard Sales Company, New Orleans.

Mr. Kramer: I offer Government's Exhibit 17 in evidence.

The Court: It will be admitted.

(The document was marked G-17 for identification and was received in evidence.)

Mr. Kramer: I have no desire to read this, Your Honor, unless the defendants wish me to.

Mr. Phelps: No, as far as we are concerned, sir.

By Mr. Kramer:

Q. Mr. Ladreyt, is it fair to say that daily newspaper advertising may be divided into three classifications? general advertising, classified advertising and local display advertising?

Mr. Wilson: Now, I object to the question. It is not a question of whether it is fair to say that. Either it is or it isn't so.

Mr. Kramer: I accept the modification of the question.

The Court: Is it correct to say that?

By Mr. Kramer:

Q. Is it correct to say that?

A. Advertising, according to media records, is divided into retail, general, automotive, financial, classified and [fol. 31] legal. Those are the classifications made by media records.

You asked me before if it didn't include other important lineage classifications.

Q. Well, I notice that you answered my question by telling the Court how media records classify advertising.

A. That is correct.

Q. Is that method of classification pretty widely accepted in industry?

A. That is standard. Media records are the accepted measurement of newspaper lineage.

Q. Do you keep your own rate cards that you get out, more or less in conformity with media records classifications? Or do you have your own system?

A. Our rate cards are based, to a certain extent, according to media records. They don't follow media record patterns, entirely, because some of the classifications in media records are the same as certain classifications of our rate card.

Q. So that there is some variation and some equivalent?

A. Well, the rate card doesn't govern the measurement of advertising.

Q. All right. Do you include—By you, I mean The Times-Picayune Publishing Company—some forms of automotive advertising in your general advertising classification?

A. Yes.

Q. And some are local display?

[fol. 32] A. Retail display.

Q. Retail display. Is it correct to say that the terms "general advertising" and "national advertising" are used interchangeably and mean about the same thing?

A. No. Some years ago, advertising was referred to as national and local, which was sort of ambiguous; and, for clarification, the National Association of Newspaper Advertising Executives decided on a clearer formula of defining general advertising and retail advertising. Local didn't mean anything.

In local advertising, we have national advertising; and, in national advertising, we have some retail advertising; so, the definition wasn't clear-cut, as I explained before: just what general and retail meant.

I don't know whether you want me to repeat it or not.

Q. No. That is fine.

It is correct to say, then, that there is some conflict between the meaning of general and national? They are not similar? Or they are not identical?

A. There is no conflict. When a man says "national advertising," that doesn't mean general advertising.

Q. I didn't hear that.

A. There is no conflict in my mind. National advertising is still used, in some respects, as general advertising. It just depends on how much schooling you have had on the subject, I guess.

Q. Thank you.

[fol. 33] Does The Times-Picayune Publishing Company have what is known as general rate cards?

A. We have a general advertising rate card, yes.

Q. General advertising rate card.

Who prepares those? Or who participates in the preparation of those general advertising rate cards?

A. The management.

Q. Well, I would like to have the name of every person you can mention who participates.

A. Well, Mr. John F. Tims, Jr. consults with me.

Q. He consults with you. How about Mr. Aubrey Murray?

A. Mr. Aubrey Murray is consulted sometimes; but Mr. Murray devotes most of his duties to other fields than general advertising.

It is sort of an accepted thing that he just lets the General Advertising Department in my hands.

Q. So that your answer is that, substantially, Mr. Tims and you prepare the general advertising cards of The Times-Picayune Publishing Company?

A. Well, that is giving me more responsibility than I have.

Mr. Tims instructs me and consults with me, but he instructs me to prepare the cards or to have them printed. They are prepared beforehand, of course.

Q. Is the Times-Picayune the dominant newspaper in New Orleans today?

[fol. 34] Mr. Wilson: I object.

A. I don't know what you mean by the word "dominant".

Mr. Wilson: That takes care of my objection.

By Mr. Kramer:

Q. I hand you Government's Exhibit 18 for identification and ask you to tell me what that is.

(Document handed to the witness.)

Mr. Phelps: Which is that?

Mr. Wilson: We haven't put 18 in evidence, have we, yet?

Mr. Kramer: No.

A. This (indicating) is a photostat of a general rate card.

The Court: We can save some time.

Using the word "dominant" in its general sense, is the Times-Picayune the dominant newspaper in New Orleans?

The Witness: You mean, in trade?

The Court: No.

The Witness: Do you mean, the Times-Picayune morning edition has more circulation and more advertising and is the leading newspaper in New Orleans?

The Court: Correct.

By Mr. Kramer:

Q. Mr. Ladreyt, what I mean is what you said in great big, bold-face type on the face of Government's Exhibit 18: "The Times-Picayune is the dominant newspaper of New Orleans and its trading territory."

[fol. 35] Mr. Wilson: I object to that. There is no evidence that this witness said that. That is a rate card that isn't in evidence.

The Court: Objection overruled.

By Mr. Kramer:

Q. Does that refresh your recollection as to whether the Times-Picayune is the dominant newspaper in New Orleans or was in 1933?

A. This rate card is dated February 1, 1933, and I don't recall having any part of creating the language. Whether it was picked up from a previous rate card or not, I do not know; but it does say that its total daily circulation is larger than the total daily circulation of the two afternoon papers combined.

The word "dominant," we will say, is sort of a jargon of the trade and refers to any paper having more advertising or more circulation, whether it is morning, evening or both.

Q. More advertising and circulation than in any other community in which it is published? Or the trading area? Is that what you mean?

A. In the city in which it is published, yes.

Q. Incidentally, February 15, 1933 was before you acquired the States, wasn't it?

A. Yes.

Q. Now, in the sense in which you use the term, is the Times-Picayune today the dominant newspaper of New Orleans? Tell us that.

Mr. Phelps: Excuse me. Did you say "use" or "used the [fol. 36] term"? "In the sense in which you 'use'," or "'used' the term"?

Mr. Kramer: In the sense in which you "used" the term. Tell us that.

Mr. Phelps: There is nothing to show the witness used the term.

Mr. Kramer: I meant, a few minutes ago.

The Court: I think he has explained here that he had nothing to do in the preparation of this particular rate card in which that word appeared.

Mr. Kramer: If the Court please, I am not referring to the rate card.

The Court: When you say "used"—

Mr. Kramer: I meant, in his sentence, he says it was.

The Court: There is nothing saying he used it in this rate card.

Mr. Kramer: Excuse me.

A. The Times-Picayune Publishing Company does have more circulation and does carry more advertising than any other afternoon edition or the afternoon edition of the New Orleans Item.

By Mr. Kramer:

Q. Now, Mr. Ladreyt, you said you had been manager of general advertising for The Times-Picayune Publishing Company since, I think you said, 1925.

A. That is correct.

Q. You also testified that you prepared or that Mr. Tims [fol. 37] prepared, with some help from you, the general rate cards or advertising rate cards of The Times-Picayune Publishing Company.

Was that true in 1933 that he prepared them with your help as it is today?

A. I do not remember that to be so. I was pretty young in the business then, and I don't know that I was competent at that time to prepare a rate card.

Q. At that time, you had been in business, in '33, for fourteen years? Is that right?

A. Yes; but only since 1925 was I manager of the department.

Mr. Kramer: I will not offer in evidence Government's Exhibit 18 at this time, but we will take it up with Mr. Tims.

The Court: Do you say you are offering it? Or identifying it?

Mr. Kramer: We have identified it, if the Court please; but I am not going to offer it until — Mr. Tims.

The Court: Thirty-three?

Mr. Kramer: That is the '33 rate card.

The Court: All right.

By Mr. Kramer:

Q. When was the first time that The Times-Picayune Publishing Company required advertisers to purchase classified advertising as a unit in the Times-Picayune morning and States evening?

A. My answer to that is the same as my answer about retail advertising. My duties are concerned chiefly with general advertising.

[fol. 38] Mr. Kramer: If the Court please, I don't think it is in answer to my question.

The Court: Do you know? Or don't you know?

Mr. Wilson: May I have the question, please.

A. I don't know.

The Court: He has answered it. He says he doesn't know.

A. (Continuing.) No. It is a matter of record.

The Court: Do you still want the question?
Mr. Wilson: No. I don't even know the question.
The Court: Proceed.

By Mr. Kramer:

Q. I show you Government's exhibits for identification 19 and 20 and ask you if you can tell me what those are.

(Documents handed to the witness.)

A. These are duplicates? Is that correct?
Q. No.

The Court: One is August and one is September.

A. They have the same page number and I was confused.

Government Exhibit No. 19 is a photostat of a page from p. 94 from Standard Rate and Data Service, dated August, 1935.

Do you want further identification?

Q. No, sir. No. That is fine.

What is the next one? No. 20?

A. Exhibit G-20 is a photostat of a page from Stand-
[fol. 39] ard Rate and Data Service, September, 1935.

By Mr. Kramer:

Q. Mr. Ladreyt, you said that you didn't know or remember when The Times-Picayune Publishing Company adopted the unit rate for classified advertising.

Who in your organization would remember that, if you know?

A. Mr. Tims.
Q. Who, under Mr. Tims, handled classified advertising?
A. I beg pardon.
Q. Who, under Mr. Tims, handles classified advertising?
A. Mr. H. U. B. Stevens.

(The documents referred to were marked Government's Exhibits 19 and 20 for identification.)

Mr. Kramer: I do not at this time offer Government's Exhibits 19 and 20.

By Mr. Kramer:

Q. I hand you Government's Exhibits 21 through 29 and ask you to tell me what each one of those is, if you know, seriatim. Those are the rate cards.

(Documents handed to the witness.)

A. Government Exhibit 21 is a photostat of The Times-Picayune Publishing Company general advertising rate card, issued December 1, 1937 and in effect January 1, 1938.

Government's Exhibit 22 is a photostat of The Times-[fol. 40] Picayune Publishing Company general rate card. It looks like it was issued May 1, 1940 and in effect June 1, 1940; but I am guessing.

Q. That is correct, sir.

A. These dates aren't in the order of the exhibits, are they?

Q. They should have been placed that way, but you read them as you find them.

A. Government Exhibit 23 is a photostat of The Times-Picayune Publishing Company general rate card. That is a copy. It is not a photostat.

It is a copy of The Times-Picayune Publishing Company general rate card issued October 1, 1941, and in effect January 1, 1942.

Government Exhibit 24 is a copy of The Times-Picayune Publishing Company general advertising rate card issued October 1, 1942, and in effect January 1, 1943.

Mr. Wilson: What was the number of that last one, Mr. Ladreyt?

The Witness: G-24.

Mr. Wilson: Thank you.

A. (Continuing.) Exhibit G-25 is a photostat of The Times-Picayune Publishing Company general advertising rate card. I am sorry, but I can't make it out.

Mr. Wilson: December 1, 1943.

Mr. Kramer: December 1, 1943.

A. (Continuing.) Issued December 1, 1943 and in effect January 1, 1944. That is according to what you told me it was. I don't know.

[fol. 41] Government Exhibit G-26 is a photostat of The Times-Picayune Publishing Company general advertising rate card, issued February 1, 1946, in effect May 1, 1946.

Government Exhibit 27 is a photostat of The Times-Picayune Publishing Company general advertising rate card, issued December 1, 1946, in effect May 1, 1947.

Government Exhibit 28 is a photostat of The Times-Picayune Publishing Company general advertising rate card, issued February 1, 1948, in effect May 1, 1948.

Government Exhibit 29 is a photostat of The Times-Picayune Publishing Company general advertising rate card, issued December 15, 1948, in effect July 1, 1949.

Mr. Kramer: I offer Government Exhibits 21 through 29, inclusive, in evidence.

The Court: They will be admitted.

(The documents referred to were marked Government's Exhibits 21 through 29, inclusive, for identification and were received in evidence.)

By Mr. Kramer:

Q. Holding those Government exhibits 21 through 29 in your hands or by your side and referring to them as often as you feel necessary, I will ask you what type of advertising is covered by amusement advertising, which is listed under classifications in each of those rate cards.

[fol. 42] The Court: Point out the place in which that appears.

By Mr. Kramer:

Q. For example, on Government's Exhibit 21, the second page, under the third heavy black line, appears the word or words "Circuses, Classification A, Amusements," etc.

A. Generally speaking, in reply to circuses and other amusements of that kind, I am not very familiar with it, because I had little to do with amusement advertising.

Q. But it is general advertising, isn't it?

A. Some are and some aren't.

Q. Well, advertisements of motion pictures?

A. By amusements: If a local picture advertising company placed an ad with us through an advertising agency featuring some picture to be released in New Orleans, that would be at the general rate.

Q. But if there were some local movie house advertising a current movie, it would be local display advertising?

A. It would be out of my jurisdiction.

Q. So that the amusement category on Government's Exhibit 21 applies to general advertising, not local display amusement?

A. That is right.

Q. Now, look at Government Exhibit 21. You will notice, will you not, that the rate on January 1, 1938 was: Morning, 40 cents; evening, 30 cents; Sunday, 50 cents; morning and evening, 50 cents.

Is that right?

Q. That applied to amusement houses, such as circuses [fol. 43] and baseball games and things like that. It didn't apply to advertising placed in the same sense as any other general advertising would be placed, such as advertising of motion picture producers.

This is the amusement transient rate which was placed on this card.

The Court: This is not local display?

The Witness: I don't think I am in a position to entirely explain this amusement rate.

By Mr. Kramer:

Q. All right. Now, look at the Government Exhibit 23. You have got it in front of you. Look at it. Turn to the second page. You will find under Classification A, amusements, political and public opinion, just as I read you in Government's Exhibit 21.

There, the rate, is it not, is morning and evening, 75 cents, and no optional rate for morning or evening.

My question is: Do you know what the circumstances were that caused The Times-Picayune Publishing Company to shift to unit rate in the classification entitled "Amusements, political and public opinion" in 1942?

A. No. I do not know.

Q. Do you remember if you were consulted?

A. I am not in position to say "no," because I am familiar with the general rates on the card. Pertaining to general advertising of the rest of the card, "Classifications and others," I have little or nothing to do with.

[fol. 44] Q. Who in the organization would have something to do with that?

A. Mr. Tims.

Q. Would Mr. Tims, personally, handle an advertiser who ran a circus and came in to place an ad?

A. No, sir. I am talking about making up the rate card.

Q. I see. So, you don't know what the reasons were for adopting a unit rate for general advertising in 1942?

A. No, sir.

A. All right. We will go to something else.

Do you remember when the additional classification on your general rate card entitled "financial banks and investment houses" was first adopted by The Times-Picayune Publishing Company?

A. I would like for you to repeat the question, please.

Mr. Kramer: Please read the question.

(The Reporter read the last question.)

A. No, not without referring to the rate cards.

By Mr. Kramer:

Q. May I suggest that you look at Government Exhibits 27 and 28 and then see if you can tell us.

A. You say, 27?

Q. Look at 27, then 28 and see if you can tell me when, for the first time, you adopted that additional classification.

A. Well, it does seem to appear on the rate card issued December 1, 1946 and in effect May 1, 1947; but it does [fol. 45] appear in rate card issued February 1, 1948 and in effect May 1, 1948.

That is all I can tell you. I do not know whether there are any intervening rate cards or not until I refer to the records.

Q. But to the best of your recollection or knowledge, that was first adopted ——

Strike that. He has answered the question.

A. I may say, again, that I have nothing to do with financial or——

Q. You don't?

A. Not locally, no, sir.

Q. I am not referring to locally. I am talking about whatever the advertising is called for on this general rate card "financial banks and investments".

A. Financial would be general. There are some things that are carried from one rate card to another to avoid confusion by different solicitors who may be working different departments.

Q. Maybe we can shorten this and help your recollection out on how much you had to do with it.

I hand you Government's Exhibit 30 and ask you to tell me what it is, if you know.

(Document handed to the witness.)

A. This is a memorandum, office memorandum written by me on January 31, 1947, to Messrs. Murray, Swayze, Charlton, Display Desk; T. J. Adams, E. Kuhn, R. Mueller.

It is a memorandum transmitting new rate cards issued [fol. 46] February 1, 1948 to become effective May 1, 1948.

Q. Look at the date of the letter, Mr. Laidfeyt: January 31, 1947. It is pretty clearly a typographical error.

A. Sir?

Q. That is pretty clearly a typographical error. That letter, undoubtedly, was written on that date in 1948, wasn't it?

A. I think so. I think you are right. I think it is a typographical error, because he talks about a rate card issued February 1, 1948, and we wouldn't write the letter on January 31, 1947.

Q. Now, my question is: Looking at Government's Exhibit 30 and reading it to yourself, doesn't that refresh your recollection as to what happened with respect to financial banks and investment houses in these other preceding questions I have been asking you?

A. What other preceding questions?

Q. Don't you remember that you did handle this problem? That you wrote a memorandum about it?

A. I think this letter is giving members of The Times-

Picayune Publishing Company departments a copy of our general rate card; and, in it, I do call attention to the date that it becomes effective, and——

Q. Thank you. Excuse me.

A. However, that is not saying that the financial banks and investment houses' rate went into effect on the day of the rate card. It may have gone into effect sometime in between the issuance of one rate card and another.

Q. Quite so.

[fol. 47] Mr. Kramer: I offer Government's Exhibit 30 in evidence.

The Court: It will be admitted.

(The document referred to was marked Government's Exhibit 30 for identification and was received in evidence.)

Mr. Kramer: I would like the court stenographer to take this one down, because I would like to interrupt.

The Court: All right.

By Mr. Kramer:

Q. This letter is headed: "Messrs. Murray, Swayze, Charlton, Display Desk; J. T. Adams, E. Kuhn, R. Muller" and it is signed by you, is it not?

A. Yes.

Q. Now, who is Mr. Charlton?

A. Mr. Charlton is manager of retail display advertising for the morning edition.

Q. And by "Display Desk," what do you mean?

A. Retail. Oh, display desk. That is the desk that sort of correlates the handling of details of sending up material. It is also a desk where they diagram newspapers.

Q. Who is Mr. T. J. Adams?

A. T. J. Adams is the credit manager for The Times-Picayune Publishing Company.

Q. Who is Mr. E. Kuhn?

A. Mr. Kuhn handles orders for general advertising for [fol. 48] The Times-Picayune Publishing Company.

Q. R. Muller.

A. Mr. Muller handles the recording of the advertising space for making invoices for The Times-Picayune Publishing Company.

Q. Are Kuhn and Muller both men?

A. Yes. They are both men and they are in the same office.

Q. The letter reads or the memorandum reads: "Herewith is a supply of new general rate cards issued February 1, 1948 to become effective May 1, 1948."

Now, that is referring, is it not, to Government's Exhibit 29? That is, copies of Government's Exhibit 29?

A. That is correct.

Q. The memorandum continues.

A. Excuse me.

Q. Yes.

A. Issued when? December 15, 1948?

Q. Issued February 1, 1948, to become effective—Excuse me. I gave you the wrong number there.

A. Yes.

Q. Government Exhibit 28.

A. 28.

Q. You are referring there to what is now Government Exhibit 28.

A. Issued February 1, 1948, in effect May 1, 1948.

Q. The memorandum continues: "Will you please see [fol. 49] that solicitors are furnished with two copies. Attention is called to the fact that rates are increased r. o. p." —What does that mean?

A. That means run of paper.

Q. —"morning, evening and Sunday and in Color Comics and/or Rotogravure Magazine.

"All existing general contracts will be honored until expiration dates, but new contracts signed on and after February 1st must include the new rates effective May 1, 1948."

Now, this is the paragraph I wanted you to use primarily to refresh your recollection: the last paragraph. Will you follow along as I read that.

"Your attention is also called to the fact that all financial advertising, such as banks and investment houses, must run in our combination, morning and evening or Sunday."

That is the end of the document, except those are your initials on the bottom of that memorandum, are they not?

A. Yes.

Q. Now again, look at Government's Exhibit 28 and tell me whether or not you remember if that wasn't the first

time you adopted that classification "financial banks and investment houses" in your general rate card.

A. Mr. Kramer, I can only repeat that the financial banks and investment houses would not appear in the May 1, 1948 rate card. It does appear in the July 1, 1949 rate card.

[fol. 50] A. No. It doesn't appear in the May 1 rate card.

Q. Beg pardon. Oh, yes. I am sorry.

Q. And does not in the May 1, 1947 Government Exhibit 27?

A. Yes.

Q. All right. One additional question on this subject.

A. The reason I can't tell you more about this is that this particular classification applied more to local display advertising and not to general display, as we know it from a national field and it might have been in some retail rate card; so, I could not testify that this is the first time that it was placed into effect.

Q. And you were calling attention to your subordinates and others in the paper the fact that it was compulsory to take the ad in both the morning and evening?

A. Uh-huh.

Q. Thank you.

Now, I would like to turn to general advertising, Mr. Ladreyt. I think you may read these here, because you have told us that this is what you do know about them.

By general advertising, Mr. Ladreyt, you refer to that category on Rate Card 28, for example, Government Exhibit 28. That is numbered "1, General Advertising".

That is your prime interest, isn't it? That is, your job is primarily concerned with the advertising that fits in there?

A. That is correct.

Q. All right. Prior to 1950, did the majority of general [fol. 51] advertisers use one daily and only one evening? One daily morning paper and only one daily evening paper in New Orleans?

A. Prior to 1950?

Q. For example, 1949.

The Court: Let's see if I understand the question.

Read the question.

(The Reporter read the last question.)

Mr. Wilson: I object to the question, because that is a matter of record, and I don't know how the witness—He can give an opinion, maybe, on it; but to be bound by any statement as to whether——

The Court: Suppose we see what he can give. He may know.

I will overrule the objection.

Q. According to my information, it is not so that general advertisers used only one morning paper and one evening paper.

By Mr. Kramer:

Q. In New Orleans?

A. Yes.

Q. Are there a substantial number or an appreciable number of advertisers in New Orleans, general advertisers who advertise in one morning paper and only one evening paper in New Orleans today?

Mr. Phelps: If the Court please, the question is phrased "substantial number" or "appreciable number".

It seems to me he is asking him two different things. It seems the question might be phrased separately.

[fol. 52] The Court: I think it is a complex question.

Mr. Kramer: I will rephrase the question.

By Mr. Kramer:

Q. Are there many general advertisers who use only one morning and one evening daily newspaper in New Orleans for advertising today?

A. They use only one morning and one evening.

Q. One morning and one evening.

A. Well, the amount of lineage and the number of general advertisers are more or less two separate things.

Q. I am not asking for the amount of lineage. The number of advertisers.

A. I am not in position to say that without referring to the records.

Q. What records would you want to refer to to get the answer?

A. I would have to analyze media records.

Q. Media records?

A. Yes.

Q. And it is your position that you now do not know whether or not many advertisers using general advertising in New Orleans use only one morning paper and one evening paper for their advertising? You don't know that today?

A. You said, "many".

Mr. Wilson: I object to the use of the word "many". Let's have some definition. "Many" may be three to you [fol. 53] and it may be forty-five to Mr. Ladreyt.

By Mr. Kramer:

Q. More than one hundred.

Q. More than one hundred use one morning and one afternoon?

Q. Do you know?

A. I would be guessing. I don't know.

The Court: They use both morning and afternoon?

Mr. Kramer: That is right. Morning and afternoon.

A. I can't tell you whether they use the morning or evening editions of the Times-Picayune and the evening edition of the Item or not. I would have to study media records and analyze the individual advertiser and his practices.

A lot of advertisers have a number of different products which they advertise and they may use, morning and evening, The Times-Picayune Publishing Company for one product and they may use the afternoon Item for the other product, which would off-balance any estimate. We can only tell by actual count of the advertisers and media records.

Q. All right. From 1933 until 1950, did you offer general advertisers lower total rates if they advertised in both the morning and evening than the sum of the separate rates for advertising in the morning or the evening?

The Court: What time was that?

Mr. Kramer: Throughout the period 1933 until February 1, 1950, was that a fact?

[fol. 54] A. You showed me a 1933 rate card.

By Mr. Kramer:

Q. Now, you don't remember that?

A. Sorry.

Q. I don't want you to refer to the rate cards. You don't remember from your own knowledge?

A. To my knowledge, we had a morning and evening rate, since the purchase of the afternoon States, when the States was made the afternoon edition of The Times-Picayune Publishing Company.

Q. And the morning and evening rate from 1933 through 1950 was lower than the sum of the two separate rates, wasn't it?

A. That is correct.

Q. Now, when was the first time you granted general advertisers a reduced rate, depending upon the volume of lineage they carried in both papers?

A. That is on the rate card. To my knowledge, it was December, the rate card issued in December, 1940. I don't remember the effective date.

Q. Would you look at Government Exhibit 22, which is the one you find so hard to read.

The Court: Here is a very clear copy of it, if you would like to borrow it.

A. You say, 22?

By Mr. Kramer:

Q. Yes. Here is a decent copy.

[fol. 55] (Document handed to the witness.)

A. Do you have a previous rate card here?

Q. Yes.

A. That is January 1, Government Exhibit 21.

According to Government Exhibit 21 on rate card in effect January 1, 1938, no volume discounts were offered.

Q. And there were volume discounts offered on Government Exhibit 22?

A. And on Government Exhibit 22, the rate card issued May 1, 1940, in effect June 1, 1940, volume discounts are offered.

Q. But you have no independent recollection now of when

you made that shift in general advertising rates in June, 1940? You don't remember what happened? Do you remember what happened?

A. What happened?

Mr. Wilson: What do you mean by "what happened"?

By Mr. Kramer:

Q. Do you remember what led up to the change? Do you remember discussing it with anybody?

A. Well, there was considerable discussion about it.

Q. Wait a minute. Tell me with whom you held these discussions.

A. I didn't hold them. They were held.

Q. You just listened? Is that it?

A. I was part of the personnel involved; and, as manager of the general advertising, naturally, I was consulted. This [fol. 56] rate card was gotten up by Mr. Tims and Mr. Rothenberg. Mr. Rothenberg is a former member of the firm of which Jann & Kelley succeeded, who is now deceased, however. Anything I say about what led up to it would be hearsay, and I prefer management to answer that.

Q. Mr. Ladreyt, I am sorry that we can't always accommodate your preferences.

Mr. Wilson: You try and see what you can do.

By Mr. Kramer:

Q. I want to know precisely what you now remember was said to you about these changes by Mr. Tims in 1940.

The Court: Can't you first find out who did say anything at all to him about this?

By Mr. Kramer:

Q. Did anyone say anything at all to you about this in the Times-Picayune organization in 1940?

A. There was a general discussion of when the rate card was proposed and being prepared and the general purpose of the rate card was to induce or attract more business into our papers.

The Court: With whom did you have that discussion?

The Witness: Mr. Tims and Mr. Rothenberg, and I do not remember who else.

By Mr. Kramer:

Q. Now, were you the first one to suggest the volume discount on general advertising in 1940?

A. No, sir.

[fol. 57] Q. Do you remember now who was?

A. I think it was Mr. Rothenberg.

Q. And he is dead?

A. Yes.

Q. Do you remember expressing any views of your own in 1940 as to the desirability or lack of desirability of making this change in your rate structure for general advertising?

A. I did not make any suggestions or recommendations; but I did agree that the volume discount would attract more business, and we since found it very successful.

Q. Successful in attracting more business to The Times-Picayune Publishing Company, do you mean?

A. That is correct.

Mr. Kramer: Excuse me, Your Honor, just a minute.

Mr. Phelps: If the Court please, I don't know how much longer we will continue. I would like to have a brief recess, if we are going to continue for some longer period of time.

The Court: We will take a recess for five minutes.

(Recess.)

[fol. 58] By Mr. Kramer:

Q. Mr. Ladreyt, you will recall we had been discussing the volume lineage discount in effect June 1st, 1940, as shown by Government's Exhibit 22. Now, my question is, is it not correct that in order to obtain the lower rate for general advertising in excess of ten thousand lines the advertiser had to purchase space in both the morning and the evening?

A. Yes. In order to enjoy a lower bracket it is necessary to use space in both morning and evening.

Q. Now, do you know whether or not following the adoption of that rate change in June of 1940, for general advertising, the amount of advertising obtained by the States increased?

A. I do not know that immediately following that the general advertising in the States increased.

Q. Was it not one of the purposes of the change in rate in June 1940 to obtain more general advertising for the States?

A. Well, the purpose was to obtain more revenues and also to obtain more advertising for our morning and evening editions. Any increase in advertising would apply to both morning and evening.

Q. Would you explain to the Court why any increase in advertising would apply both to the morning and evening?

A. Well, because after a general advertiser used ten thousand lines in order to earn a lower rate he was required to use space in both morning and evening.

Q. It is a fact, is it not, that in 1940 the Times-Picayune [fol. 59] daily was carrying a great deal more advertising, general advertising, than the States?

A. I think so. I could not answer definitely but that is my opinion, it was.

Q. Your answer to the question whether the purpose of adopting the new rate in June, 1940, was to obtain more advertising lineage in the States, is, as I understand you now, the purpose was to obtain more advertising lineage in both papers?

A. That is correct.

Q. Looking at Government Exhibit 22, which is your rate card for June 1st, 1940, Mr. Ladreyt,——

A. Yes.

Q. —in order to obtain the lower rate the general advertiser had to put the twenty thousand lines in both papers, did he, or could he pick and choose? In other words, could he put, in order to obtain the lower rate, could he have nineteen thousand lines in the Times-Picayune and one thousand in the States, or did he have to have twenty thousand in the Times-Picayune and twenty thousand in the States.

A. He is required to have ten thousand lines, as a base, in either the Times-Picayune, morning, or the afternoon edition of the States in order to; and then if he goes into the twenty thousand line rate he is required to run ten thousand both morning and evening.

Q. Ten thousand in each. You say "in both." You mean each.

A. Yes. There is nothing to stop him from running all

twenty thousand morning and evening to earn the lower rate—the morning and evening rate—but the inducement [fol. 60] above ten thousand lines applies to both morning and evening.

Q. Well now, let's take the case of an advertiser who wants to insert twenty thousand lines under your rate card, Government Exhibit 22, a general advertiser who wants to insert twenty thousand lines within one year, only in the Times-Picayune. He pays the 32 cent rate, doesn't he? not the 31½?

A. I am sorry, but it looks like 34 to me. Whatever it is.

The Court: You say if he wanted to run twenty thousand lines in the Times-Picayune?

A. Only.

The Court: Only.

A. Then he paid that rate under "Morning" which starts at ten thousand lines.

The Court: 24 cents, isn't it?

A. 34.

Mr. Kramer: It is very hard for him to read that.

A. It is 24; yes.

The Court: In other words, he pays 24 cents, regardless of the amount in excess of ten thousand if he took it all in the Picayune?

A. That is correct.

By Mr. Kramer:

Q. But he would pay the 24 cent rate even if he took twenty thousand lines all in the Times-Picayune.

A. Even if he took a hundred thousand.

[fol. 61] Q. But if he takes twenty thousand in both the Times-Picayune and twenty thousand in the States he gets the benefit of what rate?

A. If he took twenty thousand lines in the morning and evening?

Q. Yes.

A. He would get a rate of 31½ cents, from this rate card.

Q. Did you adhere to the rates on your rate card, or do you ever vary them?

The Court: Just a minute. If he took twenty thousand in the morning and twenty thousand in the afternoon, that

would make a total of forty thousand, wouldn't it, and would it not come under the next bracket?

A. No, he wouldn't. If that was said, I did not understand the question.

If he uses twenty thousand lines, morning, his rate would be 24 cents. Isn't that right? Isn't that what you asked me?

The Court: That is right.

A. Then you asked me if he used twenty thousand lines, morning and evening.

By Mr. Kramer:

Q. What is his rate then?

A. That is not in addition to the first twenty thousand.

The Court: You mean a total of twenty thousand?

A. A total of twenty thousand lines, morning and evening, his rate would be 31½ cents.

Q. When you say a total of twenty thousand morning and evening——

[fol. 62] A. Twenty thousand morning and twenty thousand evening. We consider that as a unit. That is one unit of advertising in one paper.

Q. Right.

The Court: Do I understand it now, if he took twenty thousand in the morning and twenty thousand in the evening, he would still get the twenty thousand rate? Is that it?

A. That is the unit rate——

The Court: I see.

A. —applying to one paper. We consider it one transaction.

The Court: All right.

A. The measurement is twenty thousand lines.

By Mr. Kramer:

Q. But he had to take the same lineage in both papers in order to get it?

A. It would run in all editions.

Q. The same ad had to run, did it, on the same day?

A. No, no; there was a leeway.

Q. How much of a leeway was there, Mr. Ladreyt?

A. At that time there was three days.

Q. A three-day leeway?

A. Yes.

Q. So that the same ad placed in the Times-Picayune on Monday morning might not appear in the States until Thursday afternoon. Is that right?

A. Within three days. It would appear Monday morn-
[fol. 63] ing; it would come back Wednesday afternoon.

Q. Come back Wednesday afternoon.

Now, was the rate structure for general advertising, exhibited on Government's Exhibit 22, in effect from the date that rate card was adopted, which is June 1st, 1940, until February 1st, 1950?

A. (No response.)

Q. Don't you remember that from your own knowledge, Mr. Ladreyt? You were Manager of General Advertising.

A. I would like to look at the card.

Q. You may look at it.

A. Before 1950. That is all. The same structure followed through until the issuance of the 1950 card.

Q. The rates changed but the structure was the same?

A. The rates changed but the structure was the same.

The Court: Which card?

Mr. Kramer: Starting with Government's Exhibit 22, which is the card which is only legible in Your Honor's copy.

The Court: I thought he said until the 1950 card.

Mr. Kramer: That is right: which I have not introduced yet, Your Honor.

The Court: Oh. I did not remember seeing it. Proceed.

By Mr. Kramer:

Q. Now, before leaving these old cards, Mr. Ladreyt, can you tell, from your own knowledge, (and if not will you try to find out during the noon recess and let us know) whether
[fol. 64] there were any other general advertising rate cards issued by the Times-Picayune Publishing Company between June 1st, 1940 and December 31, 1949, other than those, or in addition to those that I have now put in evidence?

A. I can't answer that. I don't know whether you have the complete file rate cards or not.

Q. But you can find out by consulting records and let us know?

A. Yes.

The Court: These are intended, or supposed to represent all of them?

Mr. Kramer: All we have, or know about, Your Honor, from 1940 through 1949.

The Court: Produced by the Publishing Company in response to your request. I mean, these are all the cards?

Mr. Kramer: I don't know where they came from. We may have obtained them elsewhere.

Mr. Phelps: They came from the Times-Picayune. They were furnished at the request of the Government. We will be very pleased to produce copies of any general rate data we can find.

The Court: I wondered whether it was a suggestion there were others, or whether there is any dispute.

Mr. Phelps: I think there were rate increases during that time. In any event we will be pleased to furnish the Court with copies of any rate cards we can find covering that period which I understand to be 1940 to 1950: general rate card.

Mr. Kramer: Thank you very much.

[fol. 65] Q. Isn't it correct that the Times-Picayune is the backbone of any advertising in New Orleans, and that the use of the Item or the States, or both, in addition to the Times-Picayune is supplemental?

A. That expression has been used in the sale of advertising and in trying to convince the advertiser that in our afternoon edition we supplied separate readers from the morning edition. From an economy standpoint, the Times-Picayune morning had a certain amount of readers, in the afternoon, the States, had also a certain amount of readers, reaching a slightly different audience, and that expression was used to identify the standing of the morning edition as to the number of readers. It was accepted that the morning edition had a greater number of readers than either of the afternoon editions. What you call supplemental, could be called the backbone or spearhead or any other term.

Q. I am going to call your attention to the month of September, 1949, less than two years ago, and I want you to tell me whether or not the States was losing general advertising to the Item about that time?

A. I wouldn't know that the States was losing general advertising to the Item. I did read a copy of a letter that I wrote to our representatives about certain gains in advertising for our afternoon contemporary.

Q. That afternoon contemporary, whenever you use the term in these letters, do you refer to the Item?

A. Sure.

[fol. 66] Q. Whenever you use that word "contemporary", do you mean the Item?

A. Yes.

Q. I hand you Government Exhibit identified as G-31 and ask you whether or not that is the letter to which you just referred in your testimony?

A. That is correct. That is the letter.

Mr. Kramer: I offer Government Exhibit 31 in evidence, if the Court please.

The Court: It may be admitted.

(The document was marked "G-31" for identification and was received in evidence.)

Mr. Kramer: I would like to give only the first page, but before doing so I would like to ask the witness what this tabular data is in answer to this letter, Government Exhibit 31?

A. What the tabulation is?

Q. What is it a tabulation of?

A. It is a tabulation of general advertising in our afternoon edition and in the afternoon Item. The first sheet is September, 1949——

Q. That is good enough. May I have the document, please?

(Mr. Kramer read Government Exhibit 31.)

Q. Now my question, Mr. Ladreyt, is this: was it part of your duty as Manager of General Advertising of the Times-Picayune Publishing Company to make studies of this kind,

showing the comparative advertising lineage carried by the
[fol. 67] States, the Times-Picayune, and the Item?

A. Yes.

The Court: Let me make an observation: With respect to that first question, along this subject, you asked him if it was his experience or if he found, I think, that the States was losing advertising to the Item. It occurred to me at the time that that was a question which might not be entirely understood by the witness.

Would the fact that the Item was gaining advertising mean that the States was losing it? or the fact that the States was losing it mean that the Item was getting it? Because I noiced here it mentions Liquor, and apparently both papers gained on liquor, but the Item gained more than the States.

Mr. Kramer: The answer, if the Court please, to your question is, No, not necessarily. The Government is going to show exactly what did happen, we think, with respect to advertising lineage in this field. Of course, we can ask the witness that.

The Court: Alcoholic beverages and Liquor, both newspapers, showed a gain, but the Item showed a larger gain than the States.

Mr. Kramer: Right.

The Court: Now, it is the Government's theory that if these people had not advertised in one they would have advertised in the other necessarily?

Mr. Kramer: No, not necessarily, Your Honor.

The Court: All right.

Mr. Kramer: Definitely not necessarily; at least not
[fol. 68] prior to 1950 when compelled advertising——

The Court: Well, the point I had in mind: Take the classification of Housing. The States lost 70,691 lines and the Item gained only 1,811, so apparently——

Mr. Kramer: It is not the Government's contention that every line the States lost went to the Item prior to 1950. We are going to show what did happen, we think, by charts and diagrams.

The Court: All right.

By Mr. Kramer:

Q. Now, what is the best recollection you now have of the first time that you ever discussed with Mr. Murray or with Mr. Tims the advisability of adopting the unit or forced combination rate for general advertising for the Times-Picayune and the States?

A. It seems to me that discussion has been going on many, many years, since the Times-Picayune Publishing Company purchased the New Orleans States and made it its afternoon edition. It has been a common practice among newspapers to have unit rates for morning and evening newspapers, and it was a natural question for us whether we should adopt it.

Q. That was not quite my question. Do you remember the first time you participated in a discussion with Mr. Tims and/or Mr. Murray regarding adoption of a forced combination rate for the Times-Picayune Publishing Company general advertising?

A. The first time would be in the early part—I didn't participate, but I was——

[fol. 69] Q. All I want to know is about the one in which you participated.

A. In discussion?

Q. Right.

A. I have heard discussions since the purchase of the paper.

Q. All right. When was the first time since 1949 that you discussed, if you ever did, with Mr. Tims the advisability of going over to the forced combination in general advertising?

A. I think that was in July.

Q. July, 1949. Now, do you remember who was present at that conference?

A. If my memory serves me right, I think Mr. Kelley was down here at that time.

Q. Mr. Kelley. Who is he?

A. He is with Jann & Kelley.

Q. Mr. Kelley was present at that conference?

A. Yes.

Q. Mr. Tims was present, and you were present, to the best of your recollection?

A. That is my recollection.

Q. Now, who else was present, if you remember?

A. I can't recall anyone else at the time.

Q. You think this was about July, 1949?

A. Yes.

Q. Now, tell us, to the best of your recollection, the substance of what was said by Mr. Tims, Mr. Kelley, and yourself at that conference.

[fol. 70] A. Well, there was discussions as to the need for more revenues. I think Mr. Tims discussed the increasing price of newsprint, and we had just issued an increase in rates on July 1st, 1949, or had just adopted a card, issued a card. We had just issued a card in 1949 increasing the rates. It was considered inopportune to immediately issue a new increase a second time within six months or so; so in order to obtain more revenues for the Times-Picayune Publishing Company, we decided on the unit rate.

Q. Do I understand that at this conference the primary reason advanced for adopting the forced combination rates on general advertising was to make more money for the Publishing Company?

A. That is right.

Q. Do you now remember what the profits of the Publishing Company were in that year? 1949?

A. No; I have no knowledge of profits. The management decides that the operating costs have reached a certain line commensurate with revenues and more revenues are necessary or they are not. That is all I know about it.

Q. Do you own any stock in The Times-Picayune Publishing Company?

A. Yes.

Q. So that you do have interests in profits apart from your job as Advertising Manager. You are a stockholder.

The Court: He did not say he had interests in stock; he said he had no knowledge of profits.

[fol. 71] By Mr. Kramer:

Q. You are furnished with annual reports of the company, aren't you?

A. I have never seen one.

Q. How many shares of the stock do you now own in The Times-Picayune Publishing Company?

A. I think about sixty.

The Court: I don't think that is important. He is not under cross examination.

Mr. Kramer: If the Court please, I would like to suggest that he is, under Rule 43(b), subject to cross examination.

The Court: He was not put on the stand under cross examination. I understood he was called as a Government witness.

Mr. Kramer: May I refer Your Honor to Rule 43(b) and read it to you ask if I may not consider him as under cross examination?

The Court: You want to declare him a hostile witness?

Just go on with your examination, and forget about the stock.

Mr. Phelps: The witness has already testified he owns sixty shares; that he did not know what the financial statements were.

The Court: He testified he owns sixty shares of stock.

By Mr. Kramer:

Q. Do you remember if anything was said at this conference in July regarding relative positions of the Item and the States in general advertising lineage?

[fol. 72] A. No, I do not.

Q. You don't remember?

A. About the discussion of relative position of general advertising? No.

Q. What did you say?

A. I said, No, I do not remember discussing the relative positions of the papers in general advertising.

Q. Do you now remember when the Item first announced it was going to publish a Sunday paper?

A. Sometime before the end of 1949: about October or November.

Q. About October or November, you think?

A. Yes.

Q. Now, were there any conditions in the general newspaper advertising business in the New Orleans market in 1949 which were different from those obtaining in 1940?

Mr. Phelps: If the Court please, I think that question ought to be directed to something: "Any conditions in the

newspaper market in 1949 and 1950." What do you have reference to, Mr. Kramer?

Mr. Kramer: 1940 and 1949. What I have reference to is to get the witness to explain what the reason was for not adopting the general advertising unit rate in 1940 instead of 1949. I am trying to get at the reason.

A. Perhaps it was because the afternoon edition had been sold on an optional basis for quite some time and it was the desire of management to gradually introduce the unit rate [fol. 73] and they were working towards that end.

By Mr. Kramer:

Q. Was the fact that the States general advertising lineage in comparison with that of the Item was going down a factor in changing to the forced combination on general advertising?

A. No.

Mr. Wilson: Going down at what time, Mr. Kramer?

Mr. Kramer: In 1949.

Mr. Wilson: In what part of 1949?

The Court: Read the question.

(The Reporter read the last question.)

Mr. Phelps: Mr. Wilson's objection was at what time during 1949. As a matter of fact the Government's exhibits will show the States was rising in 1949, as a whole.

The Court: The change became effective at a particular time. I think the witness knows when that time was. That is the only time that can be referred to. I think the question is proper.

A. The fact that the change was not made or any discussion was made concerning relative lineage and, as a matter of fact, the only recollection I have of any improvement in the Item over the States was during the month of September, and from the letter you just read I would not know of any other case unless I analyzed Media Records month by month during the year 1949.

Mr. Kramer: If the Court please, if Your Honor thinks he has answered I will pass on to something else, but I don't, [fol. 74] I think it could be answered "Yes" or "No."

The Court: Let's hear the answer.

(The Reporter read the last answer.)

The Court: I think he can make a better answer than that. I don't know that he can answer it "Yes" or "No."

A. Well, the answer would have to be "No," if you insist upon a "Yes" or "No" answer. I can't give you an answer without referring to records. You have one letter that we discussed lineage trends in but it does not mean that we lost any business to the Item or the Item had a particular advantage on certain accounts. The mortality of advertising accounts: We may have fifty thousand lines from one account in 1949 and they might use magazines or television or something else the next year. I don't know. It is pretty hard to put your finger on whether you are losing business to one paper or another unless it is actual accounts you have in mind. If they get an account away from you I guess you are losing it.

By Mr. Kramer:

Q. But your adoption of the forced combination on general advertising on February 1st, 1950, was not motivated, you say, (do I understand you?) to any extent in a desire to see that The Times-Picayune Publishing Company got more general advertising lineage in comparison to that obtained by the Item?

A. Well, it was motivated to improve the position of the Times-Picayune Publishing Company: obtain more revenues for the Times-Picayune Publishing Company. When you are in competition you don't know where business comes [fol. 75] from. It might come from television, billboards, or something else. It is something that placed us in position to offer an attractive milline rate to national advertisers, to give them a lower rate for a million readers.

Q. When did you announce to the advertisers you were putting into effect a forced combination for general advertising?

A. Well, to my memory, we issued a general rate card——

Mr. Kramer: May I withdraw that question, Your Honor? I find I have it out of place. I will get to it in a minute.

Q. I hand you Government Exhibit 32;——

The Court: Would this be an appropriate place to stop for the noon recess?

We will take a recess, gentlemen, until a quarter of two.

(Whereupon, the luncheon recess was taken at 12:35 o'clock p. m., to 1 45 o'clock p. m.)

[fol. 76] Afternoon Session

By Mr. Kramer:

Q. Mr. Ladreyt, when did you first learn that the Stern interests were taking over the Item?

A. I think it was around about the time they took it over. I don't know much about it beforehand. I can't remember exactly.

Q. Well, do you happen to remember now when they did take it over?

A. In July, 1949.

Q. Now, was this meeting with Mr. Tims and Mr. Kelley that you described before the recess, before or after you learned about the Stern interests coming in?

A. I do not know.

Q. You don't remember, you mean?

A. No.

It might have been at the same time. I can't refresh my memory on when I learned about the Sterns taking over the Item. I think it all happened pretty quickly.

Q. Do you now remember when the final decision was made to adopt the unit combination rate on general advertising?

A. It is my recollection it was more or less decided in that summer meeting.

Q. In the summer meeting which you think was in July?

A. Yes.

Q. Who made the final decision?

[fol. 77] A. That is between Mr. Tims and management, I suppose. I looked to Mr. Tims for final direction.

Q. Do you now recall, subsequent to the July meeting you have described, any other meetings that you had with Mr. Tims in which the forced combination rate for general advertising was discussed?

A. We had a meeting to adopt a rate card.

Q. Do you remember now when that meeting was held?

A. That was either late October or early November?

Q. 1949?

A. Yes.

Q. Do you remember who was present at that meeting?

A. Mr. Tims and Mr. Kelley and Mr. Jann. I think there were some other people there too. I am not quite sure.

Q. But the best of your recollection is that Mr. Kelley was at both of these meetings? The July meeting?

A. Yes.

Q. And the fall meeting?

A. Yes. Mr. Jann was at both of those meetings, too. I didn't mention that before.

Q. During the noon hour, did you take this up with Mr. Kelley? Did you discuss with him these meetings during our recess?

A. I asked Mr. Kelley what was the exact date he came down here in July and he told me they were all down here for the N. A. E. A. convention.

Mr. Kramer: The next witness will be Mr. Kelley, so I [fol. 78] don't think I will have to go along much more on this.

Q. Can you tell us, briefly, why Mr. Jann and Mr. Kelley were at these meetings?

A. Mr. Jann and Mr. Kelley were in New Orleans the latter part of June to attend the convention of the Southern Newspaper Publishers—no, the Association of Newspaper Advertising Executives, which was held at the Roosevelt Hotel.

Q. And being in town you invited them to participate, Is that it?

A. Well, we always get together whenever they are in town for a general discussion of all matters pertaining to general advertising.

Q. Did Mr. Jann and Mr. Kelley come to the October or November meeting specially or did they happen to be in New Orleans for any other purpose?

A. I think they came here specially for the meeting.

Q. Now, will you tell the Court, to the best of your recol-

lection, the substance of the conversation that Messrs. Jann, Kelley, Tims and you had in the October, 1949, meeting?

A. Subsequent to the October meeting?

Q. No. What happened? What was said at that meeting, to the best of your present recollection?

A. Well, we were simply adopting the structure of the rate card at that time, which we had decided to place in effect.

Q. Mr. Ladreyt, I hand you Government Exhibit for identification 32 and I ask you to tell me, if you know, what it is.

[fol. 79] A. Without reading it all through, it is a letter from me to Jann & Kelley, to their various offices, dated January 17th, 1950. It is enclosing a copy of advertising report, "from three New Orleans newspapers", from the year 1949, compiled from our records. I assume you are going to read it.

Mr. Kramer: I offer Government's Exhibit 32 in evidence.

The Court: It will be admitted.

(The document was marked "G-32" for identification and received in evidence.)

(Mr. Kramer read Government Exhibit 32.)

Q. Mr. Ladreyt, what is meant by "A.B.C." in this?

A. That is the Audit Bureau of Circulations.

Q. Do you say the Audit Bureau of Circulations carry figures on advertising lineage?

A. No, sir; that is circulation.

Q. On circulation, in your papers, broken down for the evening States and the morning Times-Picayune and the Sunday papers?

A. They do.

Q. I notice that you had quite a bit of statistics and comment in Government Exhibit 32 concerning the retail display advertising situation. Can you explain your interest in these figures in the light of your testimony earlier that you had nothing to do with retail display?

A. Yes. My testimony before had nothing to do with the sale of retail advertising or policies concerning retail ad-

vertising, but I am vitally interested in retail advertising as a classification because that often influences an advertiser in [fol. 80] the selection of newspapers. That letter is a report to our representatives giving them the competitive information, or information to help them sell the Times-Picayune in the morning and the States, afternoon. If we have a competitor going around the national field talking about what tremendous gains they have been making and giving the impression that they were taking the business away from us, or otherwise infringing on the lineage and we have reason to give our representatives information taken from actual records of fact, which are known as Media Records, and the Audit Bureau of Circulations. That is merely giving them information as to the actual reports of those organizations.

Q. You say "infringing" on lineage. Do you mean——

A. That word "infringing" was a poor choice of words, and does not mean infringing. It means that they were just talking about their accomplishments which were detrimental to us in the competitive situation.

Q. Their accomplishments were detrimental to you in the competitive situation. Do you mean by that, that their gain was your loss, generally speaking?

A. In a broad sense, when a newspaper company talks about what tremendous strides they are making in the market they are offering a competitive condition that we take notice of.

Q. Is it correct to say that you place great importance on the trend in advertising in your newspaper as a factor in securing your additional advertising?

A. Well, we want to keep posted on what is going on. We [fol. 81] want to keep our representatives posted and people who sell our advertising.

Q. So that it is——

A. For instance, you talk about that city printing: our representatives may not think about it at the time and the picture would produce a mistaken picture, and that is why when you ask me about Media Records, what they take in: they take in all that four hundred thousand lines that would not be reflected in that classification. You have to go a little further into the picture for that.

Q. Were you disturbed about the prospect of the Item gaining in lineage as compared with the States after the Stern interests took over in 1949?

A. No. It was not the first time, if that was a fact, that the Item had gained lines. The Media Records, over a period of years, will show that they gained lines before, several years back. They showed some lineage gains and while Media Records will show for the past several years, our evening paper carried more general advertising, it will also show that the afternoon Item, several years, showed more than the States. In 1949 we had no reason to be greatly alarmed any more than we would be in '46 or '45 or any other year.

Q. Was the forced combination in general advertising adopted for the purpose of increasing lineage in the States to a level above that of the lineage in the Item?

A. No. We adopted the unit rate to produce more revenue for The Times-Picayune Publishing Company.

Q. It has had that effect, hasn't it, of increasing the [fol. 82] lineage in the States relative to that of the Item?

A. It has had the effect of increasing lineage in the States, but that was because our morning edition carried quite a volume of business, and the advertisers using our morning edition, in adopting our afternoon edition, morning and evening combination, would necessarily give added business to the States.

Q. When did you announce to the advertisers that you were putting into effect the unit rate on general advertising?

A. According to my memory it was of December 1st.

Q. I hand you Government's Exhibit for identification, "33," and ask you if that is a photostatic copy of the announcement you made?

Mr. Phelps: May we see that, please, Your Honor? We don't appear to have a copy of this one.

(Document presented to counsel.)

By Mr. Kramer:

Q. My question is, if you can tell me, what Government Exhibit 33 is?

A. This is an announcement of rate card issued December 1st 1949, in effect February 1st, 1950.

Q. Did you send that to all your general advertisers?

A. No. We sent this, following the usual practice, to advertising agencies.

Q. Did you send it to all your general advertising agencies?

A. No. We sent it to all advertising agencies known to be recognized by the American Newspapers Publishers [fol. 83] Association or the Southern Newspaper Publishers Association.

Q. About how many are there in those two classifications?

A. I would think a thousand or more.

Mr. Kramer: I offer Government's Exhibit 33 in evidence.

The Court: It will be admitted.

(The document marked "G-33" for identification, was received in evidence.)

(Mr. Kramer read Government Exhibit 33, except ABC publishers statement.)

By Mr. Kramer:

Q. I now hand you Government Exhibit 34 for identification and ask you to tell me what it is.

A. This is a copy of the Times-Picayune Publishing Company general advertising rate card issued December 1st, 1949, in effect February 1st, 1950.

Q. And that is the rate card that adopted the anit rate for general advertising?

A. Yes.

Q. For the first time?

A. The complete unit rate.

Mr. Kramer: I offer Government's Exhibit 34 in evidence.

The Court: It will be admitted.

(The document marked "G-34" for identification was received in evidence.)

[fol. 84] By Mr. Kramer:

Q. After you issued that announcement to these advertising agencies did you receive notification in writing from any general advertising agencies objecting to the forced combination? By "you", of course, I mean by The Times-Picayune Publishing Company.

A. Yes.

Government Exhibits 35, 36 and 37 for identification: the written notifications of complaints to which you have just referred.

Mr. Phelps: If the Court please, I am not persuaded that the term "complaints" is applicable to all three of those exhibits. I would like to have the exhibits speak for themselves as to whether they are complaints.

Mr. Kramer: I withdraw the suggestion that they are complaints, Your Honor.

By Mr. Kramer:

Q. Those are letters you received, are they, from general advertising agencies after you issued the announcement?

A. One of the letters is from Foote, Cone & Belding, New York. 35

The Court: 35?

A. 35. One is a letter from Al Paul Lefton & Company, in New York: No. 36. And one is a letter from J. D. Tarcher & Co., Inc., New York: No. 37; which are the three letters.

Mr. Kramer: I offer Government Exhibits 35, 36 and 37 in evidence.

[fol. 85] The Court: They will be admitted.

(The documents marked "G-35, 36 and 37" for identification were received in evidence.)

(Mr. Kramer read Government's Exhibit 35.)

By Mr. Kramer:

Q. Mr. Ladreyt, why did you not adopt the unit rate for local display advertising at the time you adopted it for general advertisers?

A. Mr. Kramer, I have no authority to adopt unit rates for retail advertising.

Q. Do you know why The Times-Picayune Publishing Company did not do that?

A. I can give you my opinion.

Q. I would like to hear the best of your knowledge if you don't mind.

A. My opinion is that it would be just an imposition on retail advertisers to force them to carry the same copy,

identical copy, from one issue to another, because the retail advertisers gear their advertising to produce immediate over-the-counter results, and an advertiser, department store or dress shop, or other merchant, may have a certain supply of merchandise: dresses, for instance, at a bargain, or a certain number of pieces of furniture at a bargain, and they may be sold out by eleven o'clock in the morning if they appeared in the morning issue; and it would be not only a hardship on the advertiser but also on the readers if the merchant were unable to supply that merchandise the next day, or even later in the same day, as far as that goes, and unlike general advertisers, they are selling brand [fol. 86] merchandise, and they have distribution throughout the city and territory, and their merchandise is staple; and it is offered for sale every day.

[fol. 87] Q. Did you prepare a written reply to these three letters, Exhibit 35, 36 and 37?

A. I did not.

Q. My question, mind you, is did you prepare one, not did you send one?

A. I neither prepared nor sent one.

Q. I hand you Government Exhibit 38 for identification and ask you to tell me——

Mr. Phelps: As long as we have read the other exhibits, I think we might read to the Court Exhibits 36 and 37 which I don't believe have been read. Those are the ones I had reference to when I said I didn't consider them as complaints.

Mr. Kramer: I intend to read them.

(Mr. Kramer then read Government Exhibit 36.)

Q. Now you never did reply to Miss Cone in writing, is that right?

A. No.

Q. Did you ever visit her yourself?

A. No.

Q. Did Mr. Kelley—I will withdraw that. I will wait and ask him.

(Mr. Kramer read Government Exhibit 37.)

Q. Who signed Government Exhibit 37? I can't read it.

A. Kirchert.

Q. Now did you ever reply to Mr. Kirchert in writing?

[fol. 88] A. No.

Q. Did you ever see Mr. Kirchert about this letter?

A. No, I never saw him.

Q. You never saw him for any purpose or at any time?

A. I haven't seen him since that letter.

Q. I now hand you Government Exhibit 38 for identification, and ask you to tell me what that is.

A. This is a letter from me to Jann & Kelley, Inc., New York Office, dated December 16, 1949.

Mr. Kramer: I offer that letter, Government Exhibit 38, in evidence.

The Court: It is admitted.

(The document marked "G-38" for identification, was received in evidence.)

(Mr. Kramer read Government Exhibit 38.)

Q. Now, Mr. Ladreyt, do you remember whether, subsequent to that time, any other comment, written or oral, about your forged combination was forthcoming?

A. I think there was another letter or maybe two other letters, I don't know.

Q. How about Mr. Kelley, did he tell you he had received other complaints, either oral or written?

Mr. Phelps: We make the same objection to the term "complaints".

Mr. Kramer: I accept the suggestion.

[fol. 89] Q. Any other letters from advertising agencies about the adoption of the forced combination rate?

A. Mr. Kelley told me he did not receive any letters.

Q. Mr. Kelley told you he did not receive any letters? Do you remember when he told you that?

A. He had told me that.

Q. Was it on the telephone or in a letter or in personal conference?

A. In personal conversation.

Q. Was anybody else present at the personal conversation besides you and he?

A. I'm not sure, there may have been. Mr. Kelley would know more about that than I do.

Q. I now hand you Government Exhibit 38 in evidence and ask you to read the last paragraph of that letter to yourself.

A. (Witness reads to himself.)

Q. Now my question is, do you remember your conversation with Mr. Tims on or about December 16, 1949, at which time you apparently agreed that Mr. Kelley should answer these letters, or Mr. Jann and Mr. Kelley should answer these letters in person rather than "you writing?"

A. I showed the letters to Mr. Tims and let him read them, and I suggested that it would be much better for Mr. Kelley to call on these people in person and discuss our new rate with them. We thought that he could do a better sales job in person that I could by a lengthy letter, which would [fol. 96] be really lengthy. We wanted to satisfy some advertising agencies who write letters sort of automatically whenever you change a rate card.

Q. I hand you Government Exhibit 39 for identification and ask you to tell me what it is, if you know.

A. This is a letter from the San Francisco office of Jann & Kelley, dated December 22, 1949.

Mr. Kramer: I offer Government Exhibit 39 in evidence.

The Court: It is admitted.

(The document marked "G-39" for identification, was received in evidence.)

(Mr. Kramer read Government Exhibit 39.)

Q. Now I hand you Government Exhibit 40 for identification and ask you to tell me whether or not that is your reply to Mr. Wingate's letter, Government Exhibit 39?

A. This is my reply.

Mr. Kramer: I offer Government Exhibit 40 in evidence.

The Court: It is admitted.

(The document marked "G-40" for identification, was received in evidence.)

(Mr. Kramer read Government Exhibit 40.)

Q. Has it been your custom in the last several years, Mr. Ladreyt, to follow the effect on general advertising lineage in the States of the forced combination?

A. To follow the effect?

[fol. 91] Mr. Kramer: Will you please read the question?

(Question read, by reporter.)

Mr. Phelps: I don't understand the question, if the Court please. What counsel refers to as forced combination, I suppose is the unit combination which took effect on February 1, 1950. I am not clear on how the witness could follow it for the last several years.

Q. May I have Government Exhibit 39, please? Now, let's get this language on forced combinations straightened out. This is Jann & Kelley, your own agent, referring to the unit rate as a forced combination, isn't he? That term is used frequently in the trade, isn't it?

A. It had been used, yes. You asked the question of the effect of the forced combination for the last several years. We haven't had the forced combination for the last several years.

Q. You are quite right. The question was improper in that respect. The word "year" should have read "months".

A. I have observed its acceptance.

Q. Did you use media record to follow the lineage situation on general advertising?

A. Yes, I used media records as well as our own office records.

Q. Does media records reflect monthly changes in advertising lineage?

A. Yes, they issue a monthly report.

Q. Now, Mr. Ladfeyt, I would like to turn to the Sunday [fol. 92] papers. In January, 1950, how many Sunday papers were being published in the City of New Orleans?

A. How many Sunday papers?

Q. Yes. One, two, three?

A. Well, the Times-Picayune and New Orleans States.

Q. Were there any others?

A. Not to my knowledge?

Q. The Times-Picayune and New Orleans States were the only papers being published in New Orleans on Sunday in January, 1950, is that right?

A. That is my recollection.

Q. Now, were you ever informed prior to the institution of this lawsuit that the International Paper Company had bound the Item not to publish a Sunday paper?

A. I had never heard of any such thing until I read the testimony in the newspapers.

Q. I hand you Government Exhibit 41 and ask you to tell me if that is a photostatic copy of a carbon copy of a letter from you to Jann & Kelley?

A. It is.

Mr. Kramer: I offer Government Exhibit 41 in evidence.

The Court: Do you make carbon copies on letterheads?

The Witness: When they wrote a letter to all offices, they sent a letterhead to every office and they made one extra. We generally use regular newsprint that we cut up in our place over there.

[fol. 93] Q. Now you sent these to all offices of Jann & Kelley? Where are the offices of Jann & Kelley?

A. New York, Chicago, Detroit, San Francisco, Los Angeles and Atlanta.

(Mr. Kramer read Government Exhibit 41.)

(The document marked "G-41" for identification, was received in evidence.)

Q. I hand you Government Exhibit for identification Number 42 and ask you to tell us what it is?

A. It is a letter from me, dated February 28, 1950, to Jann & Kelley, Inc., all offices.

Mr. Kramer: I offer Government Exhibit 42 in evidence.

The Court: It is admitted.

(The document marked "G-42" for identification, was received in evidence.)

(Mr. Kramer read Government Exhibit 42.)

Q. Government Exhibit 42 is another example, is it not, of your interest as Manager of General Advertising in the retail display rates of your paper and the Item?

Mr. Wilson: I object to that form of question. Whether it is an example or not, the exhibit speaks for itself, and if you want to know whether he had an interest, he will, no doubt, testify that he did.

Mr. Kramer: I think I shall accept counsel's suggestion. Did you have an interest as Manager of General Advertising in the retail display rates of your paper and the Item? [fol. 94] A. The interest I had was keeping our offices informed of rate changes because in the national field, when you have any change in a rate card, they ask you if you had a change in your retail cards and we keep them informed, strictly routine. Again I say, I have nothing to do with the formation of retail cards.

Mr. Kramer: I believe that is all.

Mr. Phelps: We have no questions of the witness, if the Court please. We assume that our right, which we understand we have, to call Mr. Ladreyt as a witness for defendant, will be automatically reserved.

(Witness excused.)

COLLOQUY BETWEEN COURT AND COUNSEL

Mr. Kramer: At this time, if the Court please, I would like to offer Government Exhibits 43 and 44 in evidence. Exhibit 43 is a letter from Mr. Swayze to Mr. Ricca, and Number 44 is a letter from Mr. Benefield to Mr. Barnett.

Mr. Wilson: Have you anyone to testify that that is what they are?

Mr. Kramer: Your Honor, I don't mean to imply that there is any objection to calling these people. All we can do is put them on the stand.

Mr. Phelps: Perhaps, if counsel would tell us what the purpose is, if it is simply to show that this — a letter taken from the files of the defendant——

Mr. Kramer: The purpose of this offer is the admissions contained in the letter, both on the separate paper and on [fol. 95] the admissions. We want them admitted for all purposes.

Mr. Phelps: We will admit that these are letters taken from the files of the Times-Picayune Publishing Company.

Mr. Kramer: I offer them in evidence.

The Court: They are admitted.

(The documents marked "G-43" and "G-44" for identification, were received in evidence.)

(Mr. Kramer read Exhibits 43 and 44.)

VINCENT J. KELLEY, called as a witness by and on behalf of the Government, being first sworn, was examined and testified as follows:

Direct examination.

By Mr. Kramer:

Q. Please state your name?

A. Vincent J. Kelley.

Q. Where do you live, Mr. Kelley?

A. 36 Sutton Place, South, New York.

Q. City?

A. New York City.

Q. What is your occupation?

A. I am in the newspaper representative business.

Q. Will you describe to the Court briefly what the newspaper representative business is?

A. Well, it is to sell forms—it is an agency to sell white space to advertisers, agencies for a number of newspaper [fol. 96] properties, not particularly white space in newspapers, in twenty-one cities.

Q. One of those cities is New Orleans, is it?

A. That is right.

Q. Who do you represent, in New Orleans?

A. The Times-Picayune Publishing Company.

Q. Are you an agent, strictly that? Do you work on a commission basis?

A. Yes, sir.

The Court: Who do you sell this to? Advertising agencies, you say?

The Witness: Advertising agencies.

Q. Is it fair that you are a go-between the newspaper and the advertising agencies? I mean, is it correct to say that?

A. Go-between?

Q. Yes.

A. To an extent, that is true, yes, sir.

Q. Do you have a written contract with the Times-Picayune Publishing Company?

A. We do.

Q. How long have you had business relationship with the Times-Picayune Publishing Company?

A. Jann & Kelley has had them for a little over seven years.

Q. How long have you personally had them?

A. Well, in a minor sort of way, for twelve years, and the twelve years before that I was in this company, I was a salesman.

[fol. 97] Q. For whom were you a salesman before you were in this company?

A. Well, the two predecessor companies, Noee, Rothenburg & Jann.

Q. Then after that name, what was the name changed to?

A. Prior to that, the name was Cone, Rothenburg & Noee.

Q. Were you with Cone, Rothenburg & Noee as an employee or as a salesman?

A. I was.

Q. Is that Cone the same as is now in Foot, Cone & Belding any relation?

A. Not that I know of.

Q. Is Jann & Kelley a corporation?

A. It is.

Q. Are you one of the principal stockholders in the corporation?

A. I am.

Q. When did you achieve a principal place in the company, what year?

A. 1944. 1943—late 1943 or 1944; in through there.

Q. Now, without going into too much detail and bearing in mind that we know nothing about the advertising business, can you give us a brief description of what the job of Jann & Kelley is for the Times-Picayune Publishing Company, in your own words?

A. Well, we call on advertising agencies and present the [fol. 98] facts on the market and on our circulation and on our per thousand cost. We also delve very deeply into the subject of other media in this market, particularly magazines, national magazines, that is. We also are in direct competition with radio and television, billboards, spectaculars, so our job is not just selling newspaper space as such. It is a case of trying to work in our newspapers to a point where we can get advertising into the New Orleans market and into the Times-Picayune Publishing Company.

Q. In connection with these duties of selling advertising in the Times-Picayune Publishing Company, are you consulted by officials of the Times-Picayune Publishing Company concerning their advertising policy, that is, their advertising rate policy?

A. Rate policy, sir? I would say yes.

Q. That is to say, there were a number of accounts who did not buy both afternoon papers, is that right?

A. That is right, yes, sir.

Q. When did you first learn that officials of the Times-Picayune Publishing Company planned to institute a forced combination rate for general advertising?

A. Well, that is a hard one to answer, because that subject had been discussed over the years, rates, and other papers have been doing this——

Mr. Kramer: Excuse me, your Honor, I don't think that is responsive to the question. It is solely when did he learn they were going to adopt it.

[fol. 99] Mr. Phelps: I believe the witness answered that it was a hard question to answer and he is answering it to the best of his ability.

The Court: I think he should be more specific. He can make an explanation later and I think he should answer the question.

A. I would say in 1948, I believe in April, 1948, it was discussed.

Q. Now do you remember in that 1948 meeting who was present?

A. John F. Tims, Henry Jann, and myself.

Q. And do you remember where the meeting took place?

A. At the publishers' convention, I believe, in New York.

Q. I'm sorry, I had forgotten. Did you say when in 1948 you had that meeting?

A. April.

Q. April. Now, do you remember whether it was decided at that meeting to adopt the unit rate on general advertising?

A. I couldn't answer that. I mean as far as I was concerned, it was discussed, and that was the end of it at that time.

Q. You heard Mr. Ladreyt testify today, did you not?

A. Yes, sir.

Q. You were here throughout all of his testimony?

A. Yes, sir.

Q. Do you remember a July meeting at which you attended?

A. Yes, sir.

[fol. 100] Q. Do you have the same recollection that you did attend a meeting in July in New Orleans in 1949?

A. Yes, sir. One correction, sir, that was, I believe, in the last part of June, 1949.

Q. The last part of June, 1949?

A. Yes, sir.

Q. Who was present at that meeting, to the best of your recollection?

A. Well, Mr. Tims, Mr. Ladreyt, Mr. Jann and myself.

Q. At that time, did Mr. Tims advise you that they had decided to go ahead with the forced combination rate on general advertising?

A. I don't recall that that was mentioned.

Q. All right. Do you remember how you happened to be in New Orleans toward the end of June, 1949?

A. Well, we came down here to attend the NAEA Convention and we were hosts, that is, the Times-Picayune Publishing Company, were hosts to these advertisers, and it was thought it would be advisable to have the representatives down here at this same time.

Q. What does NAEA stand for?

A. That is National Advertisers Executive Association. There are so many of those it is hard to keep them straight.

Q. Now, Mr. Ladreyt, as I recall, mentioned a Fall meeting, he said, in October or November of 1949, at which you attended. Do you remember that meeting?

A. Yes, I remember being down here in the Fall of that year.

[fol. 101] Q. Do you remember what took you down to New Orleans at that time?

A. My recollection is that Mr. Tims asked Mr. Jann and me to come down to New Orleans for a discussion of rates and other subjects pertaining to general or national advertising.

Q. Do you remember if he asked you to come down by means of a written communication or orally?

A. I do not recall how he asked.

Q. At any rate, you came down in response to his request?
A. That is right.
Q. Now, was it at that meeting that it was decided to shift to the unit rate on general advertising?
A. That is when, now, October or November of 1950?
Q. 1949.
A. 1949. No, sir, we did not decide at that meeting. We discussed it; we talked about rates and many other things, and particularly about our Sunday magazine. I believe we talked about it, the Roto magazine.
Q. Does Roto stand for rotogravure?
A. Yes, sir.
Q. Now, you say at this October or November, 1949, meeting, one of the subjects you talked about was the Rotogravure magazine of the Times-Picayune. Did you at that time know that the Item was going to publish a Sunday newspaper?
A. I did not, Sir. You are talking now about the Fall of [fol. 102] '49?
Q. Yes.
A. No, sir.
Q. Do you now remember when the unit rate on general advertising was put into effect?
A. Do I recall when it was?
Q. Yes.
A. Yes, sir. It was put in on February 1, 1950.
Q. That's right. So that this October-November meeting was approximately three months before the rate went into effect?
A. I want to correct myself there, please. I am sorry about that. I was one year early. That rate matter was discussed in the Fall of 1949. We announced it on December 1, 1949, to become effective February 1, 1950. That is right, it was discussed.
Q. Now, what I am trying to get all you know about, Mr. Kelley, is when you were informed or believed that the decision had been made to shift to the unit rate on general advertising. Was that decision taken at this October-November meeting, 1949, which you attended?
A. Well, we talked about rates, we talked about our magazine, we talked about general advertising, and I don't recall

that I was there when the decision was reached as to the unit rate.

Q. All right. Do you now remember how you were informed of the decision to adopt the unit rate on general advertising?

A. I believe that it was considered to be a good thing——

[fol. 103] Q. No, that isn't my question.

(Question read by reporter.)

A. No, I don't exactly recall how we were informed about it.

Q. Is it correct to say that you were consulted regarding the wisdom of adopting the unit rate on general advertising?

Mr. Phelps: I object to the question as leading and suggestive. This happens to be Mr. Kramer's witness.

Mr. Kramer: If the Court please, I didn't raise the point at this time because the question is unimportant. I again suggest that this witness is a Managing Agent for the defendant and pursuant to Rule 43(b) he may be cross-examined.

Mr. Wilson: I dispute the fact that he is a Managing Agent or any form of an agent. He just testified that he is a newspaper representative for twenty-one newspapers. We happen to be one of them.

The Court: If he is a Managing Agent, I do not see what the rule would be. We might as well settle it now, I suppose. The witness can be called for one purpose and then be cross-examined. I do not see how you can call the witness a new witness and use him as your witness up to a point, and then say he is hostile or is a Managing Agent on cross-examining him. Go back to direct. I do not understand—if you put him on the stand on cross-examination, that is one thing. Then immediately, the question is raised as to whether he is one of those officials contemplated by the rule. Of course, the rule also covers the general rule with respect to unwilling and hostile witnesses. This witness have given no sign [fol. 104] of hostility or unwillingness either. He was placed on the stand, as I understood, as your witness.

Mr. Kramer: If the Court please, in order to avoid confusion with respect to all further witnesses, any witness that we call who is an officer of the defendant and a Manag-

ing Agent of the defendant or a defendant himself, is being called under 43(b). Therefore, we would like to have the full benefit, whatever it may be, of Rule 43(b).

The Court: I do not think this witness is covered by Rule 43(b).

Mr. Kramer: Very well, your Honor.

The Court: I do not think it will make a great deal of difference with respect to this witness.

Mr. Kramer: I don't either, your Honor. I was merely doing it so as not to allow anyone to think we created a precedent for the Government against the defendant.

The Court: It seems to me that you should just get him to say what the nature of his discussion was, what his role was or the part he played in the conference. If you would do that, you would have what you are looking for. I am not suggesting to counsel how he should run his case, but I think it would save time to get right down to the point.

Mr. Kramer: I wish your Honor would advise me, at least as to how——

Q. What was your role in the conference of October-November, 1949, with Mr. Tims and others of the Times-[fol. 105] Picayune? What were you called there for, what did you do?

A. Well, to review the rate structures, the line rate, the cost per thousand, and then just talked about this unit rate. We didn't just talk about this unit rate alone. We talked about magazine rates and things of that kind. A complete and composite picture of the rate structure. I am trying to answer the question as best I can.

Q. Did you expect the forced combination to increase general advertising lineage in the States?

Mr. Wilson: Well, I object to that question as to what he expected.

The Court: That is not an objection to the question.

Mr. Wilson: Well, the question is irrelevant and immaterial, what he expects.

The Court: This witness was giving advice, examining the rate structure, and I think making recommendations. Is that correct?

The Witness: That is right.

Q. The question is, did you expect the forced combination to increase general advertising lineage in the States?

A. You are speaking of the unit rate?

Q. Yes, the unit rate.

A. I expected that a rate of that kind would not only affect the afternoon edition but more particularly would affect the whole market, all papers, the media as a whole.

Q. By "affect the afternoon editions", do you mean in-
[fol. 106] crease the general advertising lineage in the afternoon edition?

A. That is right.

Mr. Phelps: I am sorry, I didn't hear whether you said afternoon editions or edition.

Mr. Kramer: Plural, editions.

Mr. Phelps: Did the witness understand? I am not sure he understood either.

Q. Did you expect the increased lineage in general advertising to come from reduction lineage in the Times-Picayune in the morning?

A. In some cases, that would occur. These advertisers or these agencies have varying schedules. Sometimes they will have an "A" schedule, 20,000 lines—I would like to explain if I may. At other times most of them have "B" schedules or 15,000 lines, and if their budget will permit, they may buy the "A" schedule in every city, in every paper in every city. Camel cigarettes is a good example of what I mean. They bought the "A" schedule here in our morning and afternoon editions. There is a vast difference between the "A" and "B". The "B" went to the Item, but our rate per thousand is less than $2.50 on milline rate, so we qualified for the "A" schedule. The Item did not. They have a milline of over $2.50.

The Court: What is milline?

The Witness: Milline is to take the circulation and divide it into your rate and whatever you come up with is your milline, the cost of reaching a million people, one line of advertising.

[fol. 107] Q. I wish you would keep your voice up just a little bit.

A. I am sorry, Mr. Kramer.

Q. Now, let's get back to where we were. I asked if you expected the forced or the unit rate on general advertising to increase general advertising lineage in the States, and you said, yes, you did. Then, I asked you if you expected the increased lineage in the States to come from reduction in lineage in the Times-Picayune. Now, can you answer that "yes" or "no"?

A. I thought I had answered that. In some cases, it would result in a reduction in the overall. However, in some cases, the unit rate has hurt the morning edition and the evening edition of the Times-Picayune Publishing Company in that the business has gone to the Item completely.

Q. What effect did you expect the adoption of forced combination on general advertising by the Times-Picayune Publishing Company to have on the lineage carried in the Item?

A. Honestly, that wasn't a consideration that I can recall.

Q. You cannot recall that that was a consideration?

A. We are in a highly competitive business, Mr. Kramer. The lower we can get our rate on a per thousand basis, the better off we are in the sale of this product that we have.

Q. I hand you Government Exhibit 45 and ask you to tell me what it is, if you know.

A. This is a memorandum addressed to all the offices of Jann & Kelley, written by me under date of November 26, 1949.

Mr. Kramer: I offer Government Exhibit 45 in evi- [fol. 108] dence.

The Court: It is admitted.

(The document marked "G-45" for identification, was received in evidence.)

(Mr. Kramer read Government Exhibit 45.)

Mr. Kramer: Will you read the last question?

(Question read by reporter.)

Q. Doesn't this refresh your recollection, Government Exhibit 45, that you did expect the forced combination to have some effect on the Item?

A. I must disagree with you, Mr. Kramer.

Q. My question is, does it refresh your recollection?

A. It doesn't refresh my recollection at all because I realized that I had said that. I have seen that correspondence. I still stand by my answer.

Q. Thank you.

A. I would like to explain, if I may——

The Court: Go right ahead.

A. That one of the curses of the newspaper business for the last—up to 1940—was that everybody was trying to exert pressure from each and every direction to get business, and as a consequence, radio prospered, magazines prospered, and the local newspaper didn't prosper. Consequently, a great bureau of advertisement was established for the express purpose of selling newspaper advertising. Our budget today is in excess of $1,000,000.00, and they are [fol. 109] out there trying to sell newspaper consistently. Our advertising agencies make plans and they set programs and we all have these various pressures of one kind or another come in from the field, and everyone is trying to tell headquarters how to run their business. That has happened too often in the newspaper business and they go elsewhere to another medium, the national magazines, and certainly a national magazine today is a great factor right in this very market. I would like to say also that we do not consider that we have morning editions that dominate this area. We used the word "dominate"—I heard that word today—and I would like to explain that we use that nomenclature in our business, that jargon, and it doesn't mean the same to other people as it does to us. In New Orleans here, magazines budgets, that is the dollars that are spent in this market to develop sales of national brands, is astounding, roughly $2,000,000.00 a year right in this New Orleans city, and the retail trading area of the twenty-five leading national magazines. That is how much they are spending in this area. Then we have the billboards, and we have spectaculars along Canal Street. We are in competition with all those people, not just in our own particular field.

The Court: What counsel had in mind was, I understood you to say, was that this discussion was being had with respect to changing the rate structure, whether at that time, at least, you gave consideration as to whether it would affect

this combination rate we have on the Item. Is that correct? You said it was not considered. I understood you to say that you hadn't thought about it at all?

[fol. 110] The Witness: That is right. We talked about our own problems. That is right.

Q. Now, would you tell in your own words what you meant when you said that the adoption of the forced combination rate or unit rate for general advertising ought to eliminate to a great extent the deleterious selling on the part of the evening contemporary. Now the evening contemporary is the Item, isn't it?

A. Yes, sir, that is right. May I just read a memorandum that came to my attention?

Mr. Kramer: I would like to see it before you read it.

The Court: What do you mean by deleterious?

The Witness: I mean by deleterious, when you get a heavy pressure coming in from district and divisional managers upsetting the well-formulated plan. Oftentimes, all the money is pulled out of newspapers and goes elsewhere.

Q. Is it correct to say that if the Item continued, you feared that you would lose business to magazines and other forms of advertising?

A. We already have, Sir. We have lost a great deal of money to the magazines.

Q. So that, it is your position that as long as the Item gets general advertising, the Times-Picayune will lose advertising to magazines?

A. No—just a minute. Would you read that question?

(Question read by reporter.)

[fol. 111] A. No, I wouldn't say that is so.

Q. Now you mentioned a memorandum.

The Court: I still don't understand the answer. Do you say, "That ought to eliminate to a great extent the deleterious selling on the part of our evening contemporary"?

The Witness: Well, I would like to clarify that. May I?

The Court: Yes.

The Witness: My contention there is when you are getting a good coverage of an area, which our editions pro-

vide, and the extremely attractive rate, or the most attractive in America, that the advertiser will remain in New Orleans or will come to New Orleans, remain in New Orleans, that the sale of merchandise will increase and eventually the dollars for advertising will increase, that will be spent in this market.

The Court: You consider that from the viewpoint of the advertiser and the manufacturers?

The Witness: To a certain extent, yes, your Honor, but it is a constructive approach, and I think it is a very important one, and I would like to read this memorandum, if I may.

The Court: We will take a five minute recess at this time *recess at this time.*

[fol. 112] Mr. Kramer: During the recess, the witness handed me two pieces of paper which I have marked G48 and which I now return to the witness and ask him to tell me what they are: these two pieces of paper.

A. These two pieces of paper are just one memorandum, p. 1 and p. 2, on the subject of Kaiser-Frazer Corporation, automobile makers, dated April 27th, written to the General Advertising Department of The Times-Picayune Publishing Company by Gordon-Hebert I presume that to be.

Q. Who is Gordon Hebert?

A. He is in the National Department of The Times-Picayune Publishing Company.

Q. And what is the year of the memorandum? You mentioned the month and day, but not the year.

A. April 27, 1951.

The Court: Who was the memorandum addressed to?

The Witness: General Advertising Department, Mr. Ladreyt of the General Advertising Department. It is not addressed to Mr. Ladreyt, but it is addressed to the General Advertising Department. It is a form memorandum. It is addressed to the representatives of the General Advertising Department.

Mr. Kramer: I offer it in evidence, Your Honor.

The Court: It will be admitted, there being no objection.

Mr. Phelps: If the Court please, it probably has very [fol. 113] little weight as evidence, because it is a report of

what one man said to another man; but we have no objection to its being admitted into evidence.

Mr. Kramer: I agree with what he just said.

The Court: Evidence? Read it.

(The Witness read Exhibit G-48.)

The Court: It may be received in evidence.

(The document referred to was marked G-48 for identification and was received in evidence.)

By Mr. Kramer:

Q. Now, Mr. Kelley, are the events related in Government's Exhibit 48 an example of what you had in mind when, in Government's Exhibit 45, you talked about the deleterious selling by the Item?

A. I refer to deleterious selling as anything that tends to pull down (indicating) the whole advertising media or medium. It doesn't matter what paper does it, but the ultimate harm is tremendous in our industry.

Q. Right. Now, tell me how the unit combination rate would tend to eliminate that kind of selling by the Item.

A. There have been many, many cases in my experience of selling our morning and afternoon editions where the agency voluntarily selected, recommended, that is, the Times-Picayune and States.

After that was known, oftentimes, letters, telegrams and things of that kind would be put into people's hands, pressures would be exerted and much unhappiness resulted as a cause of that in most cases.

[fol. 114] I can think of one account, the Anahist account, which was one on which that happened.

Q. You tell us about that Anahist account.

The Court: Since you got on that, who was unhappy?

The Witness: Everybody was unhappy. That kind of selling is not in evidence in the case of magazines, general magazines of national distribution.

The district men, wholesalers, personal friendships and one thing and another are not or do not have a great bearing on the selection of national magazines and is one of the difficulties that we have in selling newspapers.

After all, we are not only selling these New Orleans editions here, but we are in competition with Atlanta and Boston and Baltimore and Los Angeles and our own business in our own industry.

The Court: Once the agency makes a recommendation with respect to national magazines, the advertiser, himself, is not pressured by——

The Witness: It doesn't get telegrams and telephone calls and many of them are not to the best interest of the manufacturer; so much so, that fifteen years ago it was a very dangerous thing in our industry, so much so that the various associations drew up resolutions, including the newspaper associations, against the destructive selling practices that hurt the medium, basically.

By Mr. Kramer:

Q. Mr. Kelley, I think I understand your testimony, thus [fol. 115] far; but the question I am trying to get you to explain is how the unit plan would eliminate that kind of deleterious selling.

A. Well, in our particular case in selling our editions, we could then go out and sell the whole market and sell it at a reasonable cost which we enjoy and which is recognized throughout the industry; and, as a consequence of that, these added impressions, if you wish to call them that, will bring about greater acceptance of merchandise, will sell more merchandise and, as a consequence, more people are selling more products; and, as a further consequence, the advertising allocation of this area is greater and everybody benefits thereby.

Q. Is it not correct that the single unit plan would make it more difficult for the Item to get advertising from national advertising?

A. That is hard to answer.

Q. I know it is hard to answer, Mr. Kelley, but it is an important question in this case.

A. It is hard to answer. It is hard to associate the Item with our particular interests. Actually, there is no connection that I can see. They have a piece of merchandise to sell, sir; and, if their rate is high or higher than an advertiser is willing to spend, I just don't see how they can.

in any way allege that our rate, being lower, is harmful to them.

Q. Nobody has alleged that their rates are higher or lower, Mr. Kelley. It was you who said the single unit plan ought to eliminate, to a great extent, the deleterious selling upon the part of our evening contemporary.

What I am trying to find out is: How will the single unit [fol. 146] plan take care of that?

I am willing to assume with you for the purpose of argument that there was deleterious selling—for purposes of argument. I am trying to find out how the single unit plan would tend to eliminate it.

A. Well, I think that I can answer that partially.

If I am an agency and I buy the Times-Picayune-States unit plan, through that plan, I am getting a very fine coverage at an extremely attractive cost.

Q. Isn't what you mean, Mr. Kelley—I hesitate to put words into his mouth.

Isn't what you mean, Mr. Kelley, that, because of the unit plan advertisements, the advertisers who advertise in the Times-Picayune and who wanted to also advertise in the States in the evening and that, therefore, that would, to some extent, prevent those advertisers who only wanted to use one evening paper from taking the Item, as well.

Mr. Phelps: If the Court please, that is purely a leading question.

Mr. Kramer: It sure is, Your Honor: I admit that.

The Court: I will permit it.

A. Let me answer it this way, if I may: If, we will say, the Item sold what they had to sell, there would be one thing, sir. The unit rate puts our papers on a list, we will say. They are recognized as giving good coverage.

If the Item, we will say, went out and sold what they had, their market, so to speak, their product, the whole area, I [fol. 147] would say that perhaps they would do better in general advertising.

It is hard for me to say that if this unit rate, if this unit rate here is the whole answer to selling practices, that is, no destructive selling practices happen or anything like that—We still are in a competitive business right now.

I am trying to answer it honestly, but it is a difficult thing to answer.

Mr. Kramer: Will Your Honor indulge with me a moment, please.

By Mr. Kramer:

Q. Are you familiar with the general advertising rate of The Times Publishing Company which was in effect prior to 1950? That is to say, the optional combination?

A. You say, I was familiar with it?

Q. Yes, generally speaking.

A. Yes. I can't recall exactly what it was.

Q. Don't you recall that that rate also gave the advertiser who wanted to use both the Times-Picayune and the States a saving, if he took both?

A. That is right. That is my recollection, sir.

Q. What I am trying to get at, you see, is what additional advantage, what additional effect the unit rate would have, in addition to the effect that the optional rate had from forty to fifty.

A. Well, I think that that unit rate permitted us to sell, constructively, all the way through. It wasn't a case of [fol. 118] going in to see a man and getting down into high tax, so to speak. We had the market to sell. We had a better service to sell. We had a six-day option to sell. We had a better spread between insertions; and, if we didn't have that unit rate, we would have been probably forced to go up in rate, I presume.

I remember that was part of the discussion.

Q. Do you agree that the Times-Picayune morning is the backbone of any and all newspaper advertising campaigns in New Orleans?

A. I do not, sir, not by any wide stretch of the imagination.

Q. You disagree with Mr. Ladreyt's testimony.

A. I don't agree that the Times-Picayune is the backbone of every—You said "every"—advertising program.

Q. Of any newspaper program.

A. Any and all, you mean.

Q. In New Orleans.

A. Any and all.

The Court: Suppose you reframe the question.

Mr. Kramer: Will the Reporter read the question.

(The Reporter read the question.)

A. "Any and all" I will answer it this way, sir: There are a number of advertisers that don't buy our unit circulation, our unit rate, a number of them.

By Mr. Kramer:

Q. There are a number of general advertisers today who do not buy your unit rate?

A. That is right.

[fol. 119] Q. You mean, they use the Item, exclusively?

A. That is right.

Q. I see.

A. May I also add: That was so before we had the unit rate.

Q. Yes. Yes, I am talking about the advertisers who do use the Times-Picayune in the morning. It has the largest circulation in New Orleans, hasn't it?

A. Yes.

Q. It has by far the most advertising lineage and has had for a number of years? National advertising lineage?

A. That is right.

Q. It today has no competing morning papers published here? The Times-Picayune is the only one?

A. That is right.

Q. Now, don't you agree that the forced combination or unit rate, when it was adopted in February, 1950, at least compelled those advertisers who wanted to use the Times-Picayune in the morning to use the States in the evening, whether they wanted to or not?

A. I can't agree with that, sir. It, perhaps, is true in a number of cases; but in many cases, they just didn't buy it. That is all.

Mr. Kramer: Read that last question back.

(The Reporter read the last question.)

The Witness: Read my answer.

(The Reporter read the last answer.)

A. (Continuing:) Well, I would like to revise that [fol. 120] answer slightly and say that there are a number of accounts that had bought the Times-Picayune, exclusively, and that the unit rate—Those same advertisers stayed with the Times-Picayune and bought at the unit rate; but, in addition to that, there were new advertisers that had come into the field and a number of those advertisers might have bought the States, anyway. I don't know. It is hard to speculate, sir.

Mr. Kramer: If the Court please, I am not sure how much I should press for an answer, but I don't believe he has answered my question.

The Court: Pursue it further.

By Mr. Kramer:

Q. Now, I want to call your attention to the rates in effect under the optional combination just prior to the time you adopted the unit rate.

Mr. Kramer: Would the Court please hand me Government's Exhibits 29 and 34.

(Documents handed to Mr. Kramer.)

By Mr. Kramer:

Q. I now hand you Government's Exhibit 29 and Government's Exhibit 34 and ask you to look at the general advertising rates on that card, on each of those cards, and tell me if the rate for the morning and evening combination on both cards is not the same.

(Documents handed to the witness.)

A. That is right, sir.

Q. So that you made no change in rates, no change in [fol. 121] rates when the Times-Picayune shifted from an optional combination to a unit rate?

A. That is right, sir.

Q. Now, in the face of that fact, do you still deny that one of the purposes, just one of the purposes of adopting the unit rate was to take business away from the Item?

A. Well, I certainly deny that.

Q. Well, if you didn't take business away from the Item, how could you stop their deleterious selling by adopting a unit rate?

A. I thought I had explained that, that any destructive selling practices, that it is bad for the business. The unit rate, maybe, gave us a good package to sell. It was priced right.

Q. How would it stop deleterious selling on the part of the Item is my question.

I can see how it would help you sell your paper, but how would it stop deleterious selling on the part of the Item?

A. Well, let me review that. I thought I said that when the Times-Picayune and States were on an optional basis that the agency would buy the optional combination the unit, voluntarily, and did so in a number of cases.

After that had been known by others in the opposition, we will say, people went out and got telegrams and telephone calls and recommendations and things of that kind, and that certainly wasn't to the benefit of the industry, as a whole. Sometimes, they would, of course, disrupt an advertising program; yet, the people that made up the pro- [fol. 122] gram had selected, voluntarily, these two papers and, incidentally, they selected them more than they did the Item on an optional basis, because we had led in general advertising, notwithstanding that kind of a situation.

Q. You have, again, explained very carefully what deleterious selling meant, but you have never explained how the unit rate would tend to eliminate the deleterious selling, and I would like to have an explanation of that statement.

Mr. Wilson: If the Court please, may I object to this constant repetition?

I understand that the witness has answered the question. I understood him to say that after they had gone out and sold the optional combination plan that then they got all of these side pressures, political pressures, and otherwise, to break up that plan, that, now, that couldn't happen, because there was the unit rate, and it couldn't happen. You couldn't break it up.

The Court: I hadn't heard anything about political pressure.

Mr. Wilson: Perhaps I used the wrong terminology.

The Court: You hadn't mentioned that, had you?

The Witness: No, sir.

The Court: Have you explained it, as far as you are able? Can you add anything to that?

The Witness: Yes.

The Court: This witness says he has explained it as far as he is able. I think that should put the matter to rest.

[fol. 123] By Mr. Kramer:

Q. All right. You remember, in the course of your testimony about the deleterious selling and happened to mention Anahist.

I hand you Government's Exhibit for identification No. 49 and ask you to tell me if you know what that is.

A. Well, it is a memorandum written by Albert Ketcham from the New York office of Jann & Kelley to Mr. Ladreyt, Times-Picayune-States.

Q. Is Mr. Ketcham one of your employees?

A. That is right.

Q. In Atlanta?

A. In New York, sir.

Q. In New York?

A. Yes.

Mr. Kramer: I offer Government's Exhibit 49 in evidence.

I have still reserved Nos. 46 and 47, Your Honor.

The Court: Correct, 46 and 47.

What is 49?

Mr. Kramer: Forty-nine is a memorandum from A. R. Ketcham of Jann & Kelley to Mr. Ladreyt.

The Court: I see.

Mr. Kramer: It is dated November 17, 1949.

The Court: All right.

(Mr. Kramer read Exhibit 49)

[fol. 124] By Mr. Kramer:

Q. Now, is the "Vin" referred to in that you?

A. Yes, sir.

Q. Do we understand that deleterious selling, as you define it, is taking business away from the States and giving it to the Item?

Mr. Wilson: I object to the question. It has been answered several times.

The Court: I think the question is objectionable in its form.

Mr. Kramer: I withdraw it.

By Mr. Kramer:

Q. Did you say that Anahist was an example of deleterious selling?

A. It is my understanding, sir.

Q. Does this relate to Anahist? This document?

A. It does.

Q. Thank you.

(The document referred to was marked G-49 for identification and was received in evidence.)

By Mr. Kramer:

Q. Now, I hand you Government's Exhibit 50——

The Witness: May I qualify that memorandum, Your Honor?

The Court: Yes.

Mr. Kramer: You can make any explanation you desire.

[fol. 125] A. I would like to. I think I should.

That report there (indicating) is not accurate. The actual thing that happened, as I understand it—and I am a pretty good authority—is that there were recommendations made somewhere along the line to switch it out of the States and put it in the Item.

The agency recommended the Times-Picayune and the States. That is my understanding.

I would like to put that in the record, if I may.

By Mr. Kramer:

Q. I now hand you Government's Exhibit 50 and ask you to tell me what that is.

A. This is a memorandum from Albert Ketcham, New York office of Jann & Kelley, Inc., to Mr. Roland Ladrey, Times-Picayune and States, on Anahist Company.

Mr. Kramer: I offer Government Exhibit 50 in evidence.

The Court: It will be admitted.

(The document referred to was marked G-50 for identification and was received in evidence.)

(Mr. Kramer read Government Exhibit 50.)

By Mr. Kramer:

Q. Now, after the announcement of the forced combination for the Times-Picayune and the States reached the national advertisers, did you hear from them concerning the new rate structure? Or any of them?

A. You say, "hear". Do you mean mail? Or otherwise?

Q. In any way: mail or in writing.

[fol. 126] A. Well, in the case of mail, my recollection is that we received no mail, directly, from the agencies; however, we did receive some telephone calls, but only a very, very few of them were acrimonious about our going to a unit rate. Some—Most, in fact, were complimentary.

Q. Most of the telephone calls were complimentary?

A. Most of the general——

Q. Are you sure of that?

A. Well, that is my impression, sir. I don't get all the telephone calls into my office, personally. I should say, the majority. I would like to change the word to majority of them.

Q. Majority.

Q. I would like to change the word to majority.

Q. Now, do you remember the names of any advertising agents, if there were any, who objected to the unit rate?

A. Well, let me say here about these letters and phone calls that we might receive: There is in any industry, in any business always somebody who is objecting. I believe that our business is not any different than other businesses in that respect; but, certainly, in our particular area in which we have several hundred agencies, ultimately, three letters came to my attention. I am speaking of the New York area. Three came to my attention from New Orleans, and I would like to say that we received very, very few criticisms about the arrangement.

Q. Excuse me, sir. Were those three letters the three you [fol. 127] heard me read while Mr. Ladreyt was testifying today?

A. That is right, sir.

Q. Thank you.

Now, do you remember the names of any national advertising agencies who objected to the forced combination, in addition to or apart from the three letters that you received?

A. Well, you hear at times a snide remark about the unit rate; but the very ones that make those remarks are the very ones that patronize them and buy them and buy them to the exclusion of one-edition papers in the very same cities; so, what they say and the remarks they pass on are not awfully important many times; not awfully important because they just don't add up.

Mr. Kramer: Can you find my previous question and read it to the witness, please.

(The Reporter read the question.)

By Mr. Kramer:

Q. Do you remember the names? That is all I asked you?

A. The three?

Q. Do you remember the names of any who objected, other than those three?

A. Only in a very mild way, Mr. Kramer.

Q. I see. Do you remember their names?

Mr. Phelps: Ask him what their names are, Mr. Kramer.

A. It is hard to tell you if I remember names. I may say [fol. 128] Seymour Margules of Carstairs, for one.

Q. Do you remember any others?

A. I don't recall whether Milton Kiebier mentioned it to me or not, but he probably did.

Q. Do you remember any others?

A. He dislikes them so much that he buys them all the time. That is the truth.

Q. Do you remember any others?

A. Well, I remember some people phoned in and said they didn't—They wondered why we hadn't done it earlier, years ago.

Q. All right. Your counsel will examine you on the questions that you want to talk about.

A. May I say this:

Mr. Wilson: Mr. Kelley's counsel is not here.

A. (Continuing:). This is the most complex business; and when I make a statement like that, it may sound silly, but it is not.

The Court: You said that some people had made remarks which you considered snide, as you put it.

Counsel has in mind, I think, the names of some of those people, any people who objected to the rate.

The Witness: But not of a serious nature, Your Honor. I would like to say that in the case of Joe Spiegel, he writes a letter on anything. On a rate increase, some will write you. Just like the gas company: They get letters from people, too.

The Court: You can either remember other names or [fol. 129] you cannot; so, you can answer that.

The Witness: I will try to remember a few names. I think Jim Short of Thompson Agency mentioned it to me, but in a very offhand way.

The Court: Let's get on.

The Witness: It didn't cause any excitement, to speak of in the industry, as far as that is concerned.

By Mr. Kramer:

Q. I hand you Government Exhibit 46 for identification and ask you to tell me whether or not that is a photostatic copy of a letter that you wrote to Mr. John F. Tims, Jr., dated December 1, 1949.

(Document handed to the witness.)

Mr. Phelps: Number?

Mr. Kramer: Our No. 37.

The Court: What number is this one? Forty-six?

Mr. Kramer: That is 46, Your Honor, yes.

A. That is right, sir. That is a letter by me to John F. Tims.

Mr. Kramer: I offer this letter in evidence, Your Honor.

The Court: It will be admitted.

(The document referred to was marked G-46 for identification and was received in evidence.)

By Mr. Kramer:

Q. Before I start to read the letter, I want to ask this [fol. 130] question: December 1, 1949, was about the date, wasn't it, that your announcement of the adoption of the unit rate reached the trade?

A. Just about, sir, yes. December 1, 1949.

Q. I think this may be of some importance, so I will take a moment and ask you.

The Court: I think, if you look at the second paragraph of the letter, it refers to rate.

Mr. Kramer: It does; but I wanted to state to the Court, because I understand that the Court may take judicial notice of the date that the letter by Mr. Kelley which we have examined him about at length, marked Government's Exhibit——

The Court: Forty-five.

Mr. Kramer: —45 was written on November 26, which was a Saturday in the year 1949.

By Mr. Kramer:

Q. Now, returning to Government's Exhibit 46:

(Mr. Kramer read Government's Exhibit 46.)

By Mr. Kramer:

Q. Now, Mr. Kelley, do you remember that conference you had with Mr. Robertson in his office in Jersey City tomorrow morning, December 2, 1949?

A. I don't recall the date of the meeting that I had with Ralph Robertson, but I had a discussion with Ralph Robertson about the situation.

Q. Including the use of the unit rate? Is that right? [fol. 131] A. That is right. It didn't seem to me it was that quickly after that issuance of the card, but I would like

to have it understood that I don't exactly recall the date, but I did have the discussion.

In regard to those telephone calls that I refer to there, you must appreciate—Will you please appreciate that they weren't condemnations. In most cases, they were to the contrary, and most of them wanted to know how their contracts were going to be handled.

You bear in mind, also, that I didn't get all those calls, personally.

Q. Yes. They were interested in knowing, weren't they, whether or not the forced combination or unit rate would be into effect at once or whether they could complete their outstanding contracts under the optional rate, didn't they?

A. That is right, sir.

Q. Do you know the reason why they were so interested in finding that out?

A. I don't know, sir, why that was. Many of them were buying the morning and afternoon editions and had to be for a good, long time.

You mentioned Colgate, Palmolive, Peet Company. They had been buying our papers to the exclusion, virtual exclusion of the Item, voluntarily, for ten years to the tune of 350,000 lines daily a Sunday and 275,000 lines daily, morning editions and afternoon editions.

Q. And yet, despite that fact, Ralph Robertson objected to the forced combination?

[fol. 132] A. He did not object to this particular forced combination. He made a speech on combinations in Chicago sometime ago, Mr. Kramer; but he did not object to this combination. He objected to combinations, per se.

Q. I see. Now when did you first learn that the Item planned to publish a Sunday edition?

A. I cannot tell you, truthfully, when I heard that.

Q. Do you know the year?

A. I think trade paper advertisement is about as quick as anything. I have forgotten how I learned of it.

Q. Did you ever discuss the Item's contemplated publication of a Sunday paper with Mr. Ladreyt?

A. Well, I presume that I did before March 5th. We certainly did before March 5, 1950. We certainly did.

Q. Do you remember the substance of the conversation

you had with Mr. Ladreyt about the Item's plans to publish the Sunday paper?

A. We had to work hard to keep our Sunday paper going at full tilt. After all, we are in a highly competitive business; comics, particularly. We sell comics and they are particularly conscious of per-thousand cost, and it happens to be quite a lucrative field.

Q. Do you remember whether or not Mr. Ladreyt told you that the Times-Picayune regarded the Item's publication of the Sunday paper as an infringement on a franchise which we believe belongs to us?

A. Well, I recall that that came in some sort of a memorandum that was mentioned earlier today.

[fol. 133] Q. Yes.

A. But there again, I have used words of that kind; not here, particularly; necessarily, rather; but we use words—That is jargon in our business. Many people out of our business don't understand it.

We say that we remove a paper. We don't mean what, perhaps, you might interpret it to mean. Mr. Ladreyt did not remove anything or The Times-Picayune Publishing Company did not remove anything, physically.

Q. Do you remember in Government's Exhibit 41 Mr. Ladreyt said that, in his opinion, there was no necessity for another Sunday paper in New Orleans?

A. Well, that was certainly a very logical conclusion, Mr. Kramer.

Q. Are you of that opinion, too?

A. I certainly am, based on the circulation and coverage.

Q. Thank you.

A. I might add: The advertiser was of the same opinion.

Q. Now, as a matter of fact, didn't you regard the publication of a Sunday Item as making them an interloper? Didn't you regard the whole operation as——

A. Yes. I could see no need for it.

Q. Didn't you regard it as an unfair invasion?

A. Not an unfair invasion. If they wished to spend their money in publishing a paper in a Sunday field, that [fol. 134] was their business; but it was my business to protect our particular Sunday paper, and that was what we tried to do.

Q. So, you protected it, did you not, by recommending the adoption of the forced combination rate on general advertising?

Mr. Phelps: If the Court please, the witness has already said that that had nothing to do with his decision or with the decision that was made.

The Court: I sustain the objection to the question.

By Mr. Kramer:

Q. I show you Government's Exhibit 47, which purports to be a photostatic copy of a letter from you to Mr. Tims, dated April 12, 1950, and I will ask you if I have stated correctly what Government's Exhibit 47 is.

Mr. Wilson: Number, please.

Mr. Kramer: Sixty-two.

(Document handed to the witness.)

A. This memorandum was written by me, Vincent Kelley, to John F. Tims, Jr., April 12th.

Mr. Kramer: I offer it in evidence, Your Honor.

The Court: Government's Exhibit 47?

Mr. Kramer: Government's Exhibit 47.

The Court: It may be admitted.

(The document referred to was marked Government's Exhibit 47 for identification and was received in evidence.)

[fol. 135] (Mr. Kramer read Government's Exhibit 47.)

Mr. Kramer: Excuse me a minute, Your Honor.

You may cross examine.

Cross-examination.

By Mr. Phelps:

Q. Mr. Kelley, what is the general practice in the newspaper industry with regard to carrying contracts to completion? Or, to state it otherwise: What is the 60-day clause?

A. Well, that is a clause that has been used by many publishers to effect an immediate, almost immediate in-

crease of the revenue. Most publishers follow that procedure. Unfortunately, it is not appreciated by the manufacturers nor the agencies, because the advertising programs often times are made up for long periods of time. Money has been set aside; budgets are arranged, and then in comes the publisher and says: "Pay me more in sixty days".

It is very unpopular. It has been submitted to the various associations for attention, and I happen to be head of one association in New York and represent the association as president, and that came to my attention, where they wanted a six-months' period of protection: and; as a second best, they would like to have contracts carried out to completion, as written, until the expiration date.

Q. Does The Times-Picayune Publishing Company have such a sixty-day clause in its contract?

A. They do, sir.

Q. Would it have had the right, under its contract, to [fol. 136] exercise the sixty-day cancellation?

A. Yes, sir.

Q. At the time that it put in the unit rate on February 1, 1950?

A. At that time or at prior times, we have had that in our structure.

Q. Do I understand that it is a matter of policy on the part of The Times-Picayune Publishing Company to carry its contracts to completion?

A. It is, sir.

Q. And it followed that policy in the instant case?

A. Yes, sir.

Q. You mentioned the other media of advertising with which newspaper advertising competes.

I wonder if you would elaborate on that as fully as you can.

Mr. Kramer: Objection, Your Honor, it being outside the scope of direct examination.

Mr. Wilson: The door has been opened. Remember, I saw a door opened and you opened it.

Mr. Kramer: If the Court please, I do not think I have opened the door. Of course, if Your Honor disagrees with

me, he will rule. I asked him no question, whatever. It is true he testified about it in some way.

Mr. Phelps: The matter is in the record, without objection from Government counsel.

The Court: Wouldn't it be repetitious?

[fol. 137] Mr. Phelps: I want a few more figures on that; but, in view of Your Honor's ruling, I will withdraw that and prove it at a later time.

By Mr. Phelps:

Q. In your testimony on direct examination, you mentioned Sawyer, Ferguson, Walker, I believe. Is that the correct name?

A. Sawyer, Ferguson & Walker.

Q. Would you tell the Court who Sawyer, Ferguson & Walker are?

A. Sawyer, Ferguson and Walker are three individuals that conduct the business in those names, as in the names of Sawyer, Ferguson & Walker. They are national. They are newspaper representatives quite similar to ours, Jann & Kelley. They represent newspapers, among which is the New Orleans Item. In addition, they represent the Richmond Times Dispatch, the Roanoke paper and Washington Post, the San Francisco Chronicle and a number of other papers, some of which are single-unit city papers.

Q. In view of your familiarity with newspaper advertising, generally, can you tell the Court whether or not selling general advertising as a unit is a general and accepted trade practice.

A. I would say that the selling and the buying of unit circulation, unit rates is very definitely an accepted trade practice.

I might add, if I may, that the papers, several papers that carry the largest volume of general advertising rank very high in the first twenty newspapers in general advertising of America. I could mention a few. I mentioned Boston Herald Traveler as one, for example, a very high rank of [fol. 138] general advertising sold as a unit.

Mr. Kramer: I object, Your Honor, on the ground that the answers are not responsive to the questions and that——

Mr. Phelps: I am perfectly willing to end the answer where it stands now, if that is satisfactory.

[fol. 139] By Mr. Phelps:

Q. Mr. Kelley, coming to the question of deleterious selling, it was my understanding of your testimony that what you meant was that after the unit rate was put in, on February 1st, 1950, the advertising agencies were able to purchase advertising, or select media, on the merits of the media without personal pressure which bore no relation to good selling. Am I correct in my understanding of what you meant?

A. You are substantially correct; yes, sir.

Q. And I also understood you to say that this type of personal pressure exerted after an agency had already made a selection was detrimental not only to the advertiser, to the manufacturer, but also to the newspaper field. Am I correct in that?

A. Definitely; you are right in that. Yes.

Q. There has been some mention of the question of monopoly in the morning field, Mr. Kelley. Could you tell us whether the time of publication is of any real significance to a general advertiser?

Mr. Kramer: Objection, Your Honor. It is outside the scope of direct examination.

Mr. Phelps: If the Court please, the question was brought out on direct examination as to whether the Times-Picayune was a dominant paper by virtue of the fact that if was the only paper published in the morning field. It seems to me that the question has a definite bearing on the meaning of the word "dominant." In other words, it is the position of the defendants that there is no such thing as a morning field or a general field, as to a national advertiser, and we submit that the question is proper at this time.

[fol. 140] The Court: I can't agree.

By Mr. Phelps:

Q. Do I summarize your testimony correctly by saying that the unit rate was generally very well received by the advertising agencies in New York?

A. Yes, sir. I would like to add here, that we do busi-

ness with several hundred advertising agencies, actively. There are about thirty-two hundred in the country, and as far as I can recall, we got six letters.

Q. As a matter of fact, according to your testimony none of the men who spoke to you personally, whether by way of inquiry or otherwise, thought enough of the conversation to make it a matter of record. Is that correct?

A. That is correct; particularly so in the case of Joe Spiegel of Foote, Cone & Belding. I have known Joe for a long time. I came up in that house. He writes a letter. I see him and instead of the conversation being serious it is casual; of necessity it is casual.

The Court: Let me ask you this question, with respect to this deleterious selling: Is it your view, your testimony, that the advertising agencies favored the compulsory, or the unit rate, because once they had made their selection of their recommendation to the advertiser if there should be any pressure brought to make a change in that they could say, "Well, we have no choice; that is the unit rate."

A. Well, Your Honor, that is true. In asking me that question in that manner I would have to say, "Yes, that is [fol. 141] true in a number of cases."

The Court: Then they would have a defense against it?

A. That is right. I would have to say, "Yes" to that in a number of cases.

But I would like to also add, there, if I may, that there is another paper here with circulation. I don't quite see the connection. I really don't; I'm sorry. I mean, they have a product and I don't see what relationship it has to us.

The Court: Well, my question was directed for the reason that the agencies themselves—because it would keep their recommendations from being upset, by outside influences.

A. To a considerable extent. But may I also say they had a Sunday paper. We had no unit rate there, no unit rate Sunday. Yet they did nothing with their Sunday paper. It was too high. They didn't have enough.

The Court: Proceed.

A. It is a highly competitive business.

By Mr. Phelps:

Q. You stated in your direct testimony that you felt there was no necessity for another Sunday paper at the time the Item started in March, 1950. Is that right?

A. That is right; yes, sir.

Q. Did events subsequently prove your feeling in that regard was correct?

[fol. 142] Mr. Kramer: I object to that, Your Honor. It calls for a conclusion.

Mr. Phelps: It is a question of fact: what happened to the circulation of the Sunday Item shortly after it started.

The Court: Repeat the question.

(The Reporter read the last question.)

Mr. Kramer: I renew my objection on the grounds it calls for a conclusion. If he wants to ask him whether the circulation went down——

Mr. Phelps: I am perfectly willing to rephrase the question.

By Mr. Phelps:

Q. Would you tell the Court what happened to the circulation of the Sunday Item after its publication?

A. Yes, sir. In the early part of 1950, prior to March 5, 1950, the representatives of that newspaper sold a fabulous amount of circulation, or tried to sell it, to advertisers. And they did not speak in terms of less than 150,000. They spoke in terms of a minimum of 150,000. Even on that basis it wasn't bought to any appreciable extent and the circulation, in its first report, dropped down to 95,000 total, which is less than the circulation that they had, or have, on a six-day basis, which has now become apparently a five-day basis because they don't have a Saturday paper. They print on Saturday, but date it on Sunday.

I would like to know what is a "Sunday paper" and what [fol. 143] is a "morning" paper.

The Court: Just answer the questions.

By Mr. Phelps:

Q. I believe you made this clear, Mr. Kelley, but I want to make certain that the record is correct on it:

In connection with making rates, general advertising rates, at the Times-Picayune Publishing Company, do I understand that your function is purely advisory?

A. That is right, sir; purely advisory.

Q. Decisions are made by the management of the company. Is that correct?

A. Oh, definitely. We have nothing to do with decisions.

Q. I believe this is also clear, but I would like to have it set forth for the record:

The Times-Picayune Publishing Company is one of twenty-one newspapers that is represented by Jann & Kelley. Is that correct?

A. Yes. We have twenty-one or twenty-two. I haven't checked over the list recently; approximately twenty-two.

Q. So that neither you nor any of your other five officers devotes time exclusively to The Times-Picayune Publishing Company. Is that right?

A. That is right.

Mr. Phelps: If the Court please, we have no further cross examination.

Mr. Kramer: Just two small points:

[fol. 144] By Mr. Kramer:

Q. Mr. Kelley, we have to retain this exhibit for the record. We will furnish a copy of it to you, if you want one.

A. I would like to have one, Mr. Kramer; yes. We would like to have the original. Can we have the original.

Q. If it is all right.

The Court: You may substitute photostats.

Mr. Phelps: It is entirely satisfactory to the defendants.

Mr. Kramer: That is all, Mr. Kelley. You may step down.

(Witness excused.)

The Court: I think we have reached an appropriate place to stop for the day, gentlemen.

We will take a recess until tomorrow morning at ten o'clock.

(Whereupon, at 4:55 o'clock p. m., the trial was adjourned until Tuesday, May 1, 1951, at 10:00 a. m.)

[fol. 145] PROCEEDINGS OF MAY 1, 1951

COLLOQUY BETWEEN COURT AND COUNSEL

The Court: You may proceed.

Mr. Kramer: If the Court please, counsel has been discussing the matter of corrections in the daily transcript and, subject to your Honor's approval, I think we have come to the following arrangement: that those corrections in the transcript that seem significant to either side will be made on the record approximately once a week on Monday, which gives us the weekend to do the correcting. For that reason, unless the corrections appear vitally important and if caught on the very same evening that the mistake is made, we won't raise such matters except once a week.

The Court: Very well.

Mr. Wilson: Yesterday, if the Court please, we promised to produce the full file of rate cards. I have not had an opportunity to check these against your photostats, but so far as we can ascertain, this is a complete file of our rate cards for the period in question.

Mr. Kramer: Thank you, your Honor. We would like to review these, and if there are any missing from our set during the period 1940-1950, we will offer them by Mr. Tims when he takes the stand.

In my hurry to finish yesterday, I neglected to offer one exhibit. This is your Honor's copies with the hole punched in it. As Government Exhibit 51, therefore, I would like to offer a letter from Henry Jann to the Times-Picayune Publishing Company, attention Mr. Roland Ladreyt, dated March 3, 1950. This Government Exhibit 51 is in reply to [fol. 146] Government Exhibit 42, admitted yesterday. I have no desire to have the exhibit read unless Your Honor wishes me to read it. I would, however, like to call upon defendant, the Times-Picayune Publishing Company, at its reasonable convenience, to produce the enclosures referred to in Government Exhibit 42 and 51, which enclosures, to

the best of our knowledge, we do not have and never did have.

Mr. Wilson: If the Court please, we gave the Government complete access to all of our files to take whatever they wanted, and if it wasn't there, why, I don't think we can find it if they couldn't find it. They were given absolutely free access to everything and, frankly, I have never seen it. I have the same problem Mr. Kramer does. I have been unable to find it up to this time.

The Court: Let us see what part of the letter you have reference to, what enclosures. Are they letters which accompanied Mr. Jann's letter to Mr. Ladreyt?

Mr. Kramer: No, they are enclosures which accompanied Mr. Ladreyt's letter to all officers of Jann & Kelley.

The Court: You have reference to enclosures mentioned in G-42?

Mr. Kramer: And better described in G-51. That is the principal reason I am asking for it. It gives a better description of them. However, if counsel says they can't find them, that satisfies us.

Mr. Wilson: We have been unable to find them. We will make one more effort. If we can do it, we will be happy to [fol. 147] produce them.

Mr. Kramer: That will be entirely satisfactory.

If the Court please, one further matter which applies, so far as we can now see throughout the trial: as your Honor knows, it has been our position that evidence relating to the practices of other newspapers is irrelevant to any issue in this case. However, your Honor, at the third pre-trial conference, ruled otherwise. Therefore, in order to avoid unnecessary interruptions, jumping up all the time, we would like to ask if we might have a standing objection to all further such evidence.

The Court: Make your objection general to all evidence of practices of other newspapers?

Mr. Kramer: That is correct, your Honor, outside of the New Orleans market, I should have said.

The Court: That is right. The objection stands.

Mr. Kramer: In addition, however, as we understand your Honor's ruling—and if we are incorrect, we would appreciate guidance—before any evidence regarding the practices of other newspapers becomes pertinent, the de-

fendant must show, as we understand your ruling, first that the rate making officials, that is those responsible in the defendant corporation's operation for rate making policies and practices knew of the practices of other papers, and that at about the time they knew of it, they adopted a practice in the Times Picayune or in the States or in the Sunday papers which was reasonably similar to the practice about which they knew in connection with other newspapers.

[fol. 148] Now, if I may illustrate what I had in mind by that very briefly, I take it that to show now that other newspapers have similar rate making practices would be of no relevancy in showing what defendants were thinking of at the time that they adopted particular rate making practices.

The Court: You mean that if the Times-Picayune Company originated this plan, the fact that others followed would be of no consequence?

Mr. Kramer: That is correct, your Honor, but it isn't quite what I meant. What I had in mind was to show today how many papers had forced combination or unit rate would be completely irrelevant, to show (a) before the October-November meeting in 1949, other papers had forced combination on general advertising, and that someone responsible for the advertising in the Times-Picayune knew about them, would, as we understand your Honor's ruling, fall within it. My point was that I thought that despite the fact we have a standing objection to the evidence, that at times when we think the evidence doesn't even support the theory on which the evidence is being offered, we will make an objection at that time.

Mr. Wilson: We will meet that when the situation arises.

Mr. Kramer: I do understand we have a standing objection on the record to such evidence. I now hand the Court the Government's exhibits which the Government proposes to introduce through Mr. Murray, who will be the next wit-

[fol. 149] ness and who will be examined by Mr. Leonard.

(Handing documents to the Court.)

Mr. Kramer: These are copies of advertisements from the defendant's newspapers.

The Court: You have offered Government's Exhibit 51?

Mr. Kramer: Yes, sir.

The Court: They will be admitted.

(The document marked "G-51 for identification, was received in evidence.)

[fol. 150] Mr. Flurry: The Government calls Mr. Frank.

LAWRENCE J. FRANK called as a witness by and on behalf of the Government, being first sworn was examined and testified as follows:

Mr. Flurry: Your Honor, I am sorry; on account of the arrangement in which we have set up our exhibit numbers I think we had better excuse the witness now and take the witness which we had originallly prepared to take at this time.

The Court: Very well. The witness may step down.

(Witness excused.)

Mr. Phelps: If the Court please, the problem seems to be that defense counsel had understood there would be no testimony on the accounting on the States, (We had been specifically advised to that effect.) until next week. With about a fifteen or twenty minute delay we will be prepared to have our accountants here, I hope, if we can get in touch with them, and we will be prepared for this kind of testimony. We were advised it would not take place until next week. There seems to be some misunderstanding. (Remark off the record.) We would like to have it understood if the accounting problem is to be gone into we would like to have our accountants present.

The Court: Gentlemen, what is the situation?

Mr. Flurry: May it please the Court, what we expect to offer through Mr. Frank and have him identify for the record are various financial monthly statements which were taken from—furnished to the F. B. I. by the Times-Picayune Company; also the compilation of figures as to man-hours [fol. 151] taken by the F. B. I. from the Times-Picayune records. We do not expect to offer any tabulations or records or compilations until a later date: next week.

The Court: Now, when you withdrew Mr. Frank I understood you were prepared to put another witness on?

Mr. Flurry: Yes. The reason why, we had not set up our documents for the other witness first.

The Court: Can't we put on the other witness first, then, and go ahead?

Mr. Flurry: Yes.

AUBREY F. MURRAY a defendant, called as a witness by the Government, being first sworn, was examined and testified as follows:

Cross-examination.

By Mr. Leonard:

Q. Will you state your name for the record, please?

A. Aubrey Frederick Murray.

Q. Where do you live, Mr. Murray?

A. At 2202 Dublin Street, New Orleans.

Q. And are you the same Aubrey F. Murray who is a defendant in this case?

A. I am one of the defendants.

Mr. Leonard: I would like to have the record show, if the Court please, that the defendant Aubrey F. Murray, is called as an adverse witness.

[fol. 152] The Court: Very well.

By Mr. Leonard:

Q. What is your profession or occupation, Mr. Murray?

A. I like to call myself a newspaper man. I am an advertising man, however.

Q. And by whom are you employed?

A. By The Times-Picayune Publishing Company.

Q. And how long have you been with The Times-Picayune Publishing Company?

A. I have been with them this last time since I have gone to them, since 1927. I worked for The Times-Picayune as a reporter and advertising man years before, but there was an interval.

Q. In which you were not with the company?

A. That is correct, sir.

Q. Will you tell us, please, what positions you have held with The Times-Picayune Publishing Company through the years?

A. When I returned to them in 1927 I was sales promo-

tion manager. Then I became Advertising Manager and then the title of Advertising Director was bestowed upon me.

Q. When was that title bestowed upon you, Mr. Murray?

A. Relatively in, I think, about '33 or '4; I wouldn't be sure.

Q. Will you describe your work for The Times-Picayune Publishing Company as Advertising Director?

A. I will, sir: My position as Advertising Director is different than the same position on many other newspapers. [fol. 153] There are no two or three newspapers in the United States which have the identical set-up. It is so because in my position, while my title would make me over all of the departments, I have very very little to do with the National Department. I have nothing to do at all except that I am its head of the Classified Department; and the Retail Department I give a good deal of my time to; but we also have a Retail Advertising Manager, of both our morning and afternoon editions.

Q. Well, tell us what you do.

A. I am, for the most part, (and this isn't trying to be flowery) sort of a creative person. I create memos to the special sections and plans that we have in the Times-Picayune. For instance, when I first came to them as Sales Promotion Manager it was my idea that the Times-Picayune foster and put on an automobile show. We did that. It was done under my supervision. I sold the whole idea. I have put on electrical shows, grocery shows, and special ideas: editions of all types.

I sell a good deal of rotogravure advertising, also. I am a salesman more than I am a desk man.

Q. I wonder if you would describe to the Court, please, just what methods are used by you and your department in the selling of general advertising by the members of your staff?

A. [illegible] the members of my own staff? of the retail staff, which I like to call mine?

Q. No, I would like to direct your attention, if I may please, to the sale of general advertising by the staff under you.

A. Well, that is left entirely to Mr. Ladreyt.

[fol. 1] Q. He is a junior to you, though, and he reports to you, doesn't he?

A. He is supposed to report to me, but he reports to Mr. Tims. I know when he needs some help on some specific problem: then he will come to me. But up and down the line, he is subject more to Mr. Tims than he is to me.

We don't run our business on a hard-and-fast rule. We are all working for one cause.

Q. Well, you know what methods are used in the sale of general advertising. Why don't you tell us?

A. Well, we present our case to the person or persons whom we are trying to interest in buying our space, through the activities of Messrs. Kelley and Jann in the national field. They present our case and we do it here by personal calls where it is necessary, if the call emanates from here. We see those people and tell them what we have to offer.

Does that answer your question?

Q. Well now, isn't it true that you consult your local contemporary to see what general campaigns are breaking in the other afternoon papers?

Mr. Wilson: Just a moment. I object to the question because even I can't understand it. "Consult your local contemporary." Do you mean, does he consult the Item about it? What do you mean by "contemporary?"

Mr. Leonard: I think the witness understands the ques-[fol. 155] tion.

Mr. Wilson: I object to it because I don't understand it.

A. Is that the question?

The Court: Just a minute. What do you mean, "Is that the question?"

A. The question is, do we consult our contemporary? the Item. No, we don't consult the Item at all.

By Mr. Leonard:

Q. You have the daily Item delivered into your department each day don't you?

A. That is true.

Mr. Wilson: I object to the whole line of testimony. It appears now, "Does he read the papers?" The word "contemporary" does not mean that to me. It means, does he talk to them?

The Court: I understand this to be a different question.

A. The new question is, do we receive the Item every day. The Item is delivered to us; yes. It is common for newspapers throughout the country to be on their toes and read their competitors' newpapers as fast and as quickly as they can get ahold of them.

Q. In your department, isn't it true you are particularly interested in seeing what advertising campaigns are breaking in the Item?

A. Yes; I want to keep abreast of it. So does Mr. Ladreyt; so does Mr. Swayze; so does Mr. Charlton, the four of us, who have the handling of this. We all keep abreast of it.

Q. What is done in your department when you find that a [fol. 156] campaign is breaking in the afternoon Item which your own publishing company is not participating in?

A. We make an effort to secure that business for our own publishing company.

[fol. 157] Q. And how do you do that?

A. I wouldn't know just what avenue, unless there was a specific case. It might be by letter. It might be by personal solicitation. It might be by a telephone call. How we did it depended solely on the status of the situation.

Q. You mean, you might have several different approaches to a particular advertising account?

A. That is correct, sir.

Q. But on your New Orleans staff, do not the members of your New Orleans staff call principally upon local managers who may be in touch with their own headquarters for these advertisers?

A. That is correct, sir.

Q. You do that as a matter of routine, don't you?

A. Absolutely.

Mr. Wilson: Now, are we talking about general advertising? Or about the classified? Or about local retail advertising?

By Mr. Leonard:

Q. Are you in any doubt, Mr. Witness?

The Court: Well, whether he is in doubt or not is other than the question. I think it is proper to find out what sort of advertising is being referred to.

By Mr. Leonard:

Q. You were discussing general advertising, weren't you?

A. You brought that up at the time: general; but we do the same thing, whether it is local or any other type. No [fol. 158] matter what type of advertising, we go after it. In other words, that is our job: to go after it and get it, if we can.

Q. And you occasionally try to cut in on the volume of the Item?

A. We don't try to cut in, specifically on the Item, if the Item is the one who would suffer, because they would lose; but we don't specifically choose the Item. We are just going to cut in on them. We get the business and let the chips fall where they may.

Q. Your efforts in soliciting, though, are not confined to general advertising? You make the same vigorous approach to classified and local display?

A. Yes. We do. You see, there are various departments that do it.

Q. Now, don't you also have a method of reaching advertisers through the use of advertisements in your own columns?

A. That has long been a custom for us: to advertise our own product in our own columns, yes.

Q. And doesn't your department produce those ads?

A. No, sir. That is produced by a separate and distinct department, known as a production department; not advertising production department; another separate department which just follows that and secures data and picks out—They don't select the medium, but they prepare the copy under the direction of Mr. Tims. Mr. Tims directs that.

Q. Mr. Murray, I call your attention to a document which [fol. 159] has been marked G-52 for identification.

(Document handed to the witness.)

Q. I ask you if you will please tell me what that is.

A. That is an advertisement which appeared in Editor and Publisher Market Guide in the 1950 edition, the title of which is *Geared:*

Do you want me to tell more? The illustration is a pilot wheel, such as one would find on a vessel. Next to it are two gears which are in mesh. The headline says, "Give you the Helm".

Am I supposed to read this, Your Honor?

Q. No. It won't be necessary for you to read it, Mr. Murray.

A. Thank you.

Mr. Leonard: We offer in evidence, if the Court please, the document which has been marked G-52 for identification.

The Court: All right. It will be received.

(The document referred to was marked G-52 for identification and was received in evidence.)

(Mr. Leonard read G-52.)

By Mr. Leonard:

Q. Mr. Murray, I hand you another document which has been marked Government 53 for identification and ask you if you can please tell what that is.

(Document handed to the witness.)

A. This is a photostat from the New Orleans States of November 4, 1949, entitled "Gun Gone Fast".

[fol. 160] Mr. Leonard: We offer Exhibit G-53 in evidence, Your Honor.

The Court: It may be received.

(The document referred to was marked G-53 for identification and was received in evidence.)

(Mr. Leonard read the document, G-53.)

By Mr. Leonard:

Q. Now, I call your attention, Mr. Murray, to a document which is marked G-54 for identification and ask you to please tell me what that is.

(Document handed to the witness.)

A. G-54 is a photostat from the New Orleans States of Monday, October 31, 1949: "Your T-P and States Want Add Appears in Quarter Million Newspapers."

Mr. Leonard: I offer in evidence, if the Court please, the documents which the witness has identified as Exhibit G-54.

The Court: It may be admitted.

(The document referred to was marked G-54 for identification and was received in evidence.)

(Mr. Leonard read Exhibit G-54.)

By Mr. Leonard:

Q. Why is it important, Mr. Murray, to advertise that you are selling two newspapers?

A. I wouldn't know. That wasn't my thinking, sir.

Q. Well, this advertisement is true, isn't it?

[fol. 161] A. It is true; but if you look at the market or if you look at the entire field, there may be and there is two schools of thought. There is no doubt that The Times-Picayune Publishing Company publishes editions, morning and Sunday, around the clock. We know that. They publish it in one plant. They use the same presses. They use the same linotype machines; and, for some part, they use the same help in many of the departments. That could creep into the thinking that they are one institution.

Of course, there have been conversations and, for selling, perhaps, I wouldn't say erroneously, but for selling purposes, they may say that there were two separate and distinct entities; but I guess that had its inception or its origin from historic reasons: that they were once owned by separate and distinct people.

We print around the clock; and, perhaps in some of my own conversations or my own writing, I have brought out these very things that these advertisements have are now telling.

I think that the thought is that they are one morning and evening edition or paper, as you might call it, in so far as readers are concerned, and that is all that we offer to our public in the final analysis is readers.

Our New Orleans States, our afternoon paper, we dress up differently than we do the morning, put different clothes on it, if you will, to attract a different readership, and that assists us in selling.

That is what we said then, but it doesn't detract at all from the true facts.

[fol. 162] Q. Well, let's stick with the true facts a few minutes, Mr. Murray. In the nomenclature of the newspaper business, you use the word "edition" with a fairly well defined meaning do you not?

A. Well, there is the morning edition. The evening edition—Is that what you mean, sir?

Q. What do you mean when you say "edition"?

A. One special paper coming off the press at a special time, at a distinct time.

Q. So that you use the word "edition" to mean a synonym for press run? Is that correct?

A. Yes. That is correct.

Q. That is the general accepted term in the newspaper business?

A. I think so.

Q. And edition is a word that is somewhat similar to copy? A copy has to have something to be copied from, doesn't it?

A. Yes, sir.

Q. And an edition must be an edition of something?

A. That is right.

Q. So that when you speak of edition, you mean edition of a newspaper, of which the Times-Picayune morning has several editions, doesn't it?

A. Yes.

Q. And one of them comes out early in the evening during the week?

[fol. 163] A. Yes.

Q. What do you call that edition?

The Court: You say, the edition must be copied from something?

Mr. Leonard: Not copied from something, Your Honor; but "edition" is like the word "copy".

The word "copy" suggests that there is something else that preceded it; and the word "edition" also has that in-

plication: that it is something that has been worked on. There is something else.

The incompleteness of the idea is that in the newspaper business when they say "edition," they mean edition of newspapers.

That is correct, isn't it?

A. (No response.)

By Mr. Leonard:

Q. Did you tell us what that first early edition of the Times-Picayune is called?

A. No. We call it the early edition, the street edition. I can, by referring to our A, B, C, tell you. I have one when it is off the press. I know when it comes out; but I call it the early edition.

Q. Isn't the slang term sometimes for a morning paper that has an edition that comes out the night before a "bull-dog" edition?

A. Yes, but I wouldn't call that specific one a "bull dog". Yes. That is the designation when they run them out early.

The Court: You call the early edition of the paper a "pup," sometimes, too, don't you?

[fol. 164] The Witness: Sometimes.

By Mr. Leonard:

Q. Your evening newspaper, the New Orleans States, likewise, has several press runs? Isn't that true?

A. Yes.

Q. And those are referred to, also, as editions?

A. Yes. It is really a morning. The States is out in the morning at ten o'clock. It is a morning edition of the States; I mean, if we are going to differentiate morning and night and morning and evening. I see that has no real purpose in our argument, but I just mentioned it.

Q. Well, in the newspaper business, there is also a term called an "around-the-clock" newspaper? Isn't that right?

A. Yes.

Q. Do you know of any?

A. I can't call off any right now.

Q. There aren't many, are there?

A. Oh, yes. I think there are several.

Q. Well, the Washington Times Herald is one, isn't it?

A. I wouldn't be able to answer that authoritatively.

Q. I call your attention, please, Mr. Murray, to a document which has been marked G-55 for identification.

(Document handed to the witness.)

A. This is a photostat from the Times-Picayune of Wednesday, January 17, 1951, entitled, "Six Big Issues of the States for Twenty-Five Cents".

[fol. 165] Q. What does that mean to you?

A. Six days of the big New Orleans States, Monday through Saturday, delivered to your home for 25 cents, Monday through Saturday.

Mr. Leonard: We offer in evidence, if the Court please, the document which the witness has identified and which has been marked for identification as G-55.

The Court: It may be received.

(The document referred to was marked G-55 for identification and was received in evidence.)

By Mr. Leonard:

Q. I call your attention, if you please, Mr. Murray, to a document marked for identification as G-56 and ask you if you will tell us what that is.

(Document handed to the witness.)

A. G-56 is a photostat from the Times-Picayune, New Orleans States of Sunday, October 9, 1949. The question is: "Want Answers Fast? Use the Times-Picayune Classified Advertisement".

Mr. Leonard: I offer in evidence the document which the witness has identified.

The Court: G-56?

Mr. Leonard: G-56.

The Court: It will be admitted.

(The document referred to was marked G-56 for identification and was received in evidence.)

By Mr. Leonard:

[fol. 166] Q. I call your attention, please, Mr. Murray, to a document which has been marked G-57 and ask you if you will please state for the record what that is.

(Document handed to the witness.)

A. G-57 is a photostat from the New Orleans States of Friday, November 3, 1951. It pictures a young lady talking on the telephone. The headline is: "The One Phone Call that Brings Results Often in One Day".

Q. I think that date is probably wrong.

A. This is November 3, 1951. It wouldn't be '51. I am reading from what the writing says.

The Court: Well, it is not part of the original paper. It is printed by someone.

The Witness: That is handwritten.

Mr. Leonard: We offer in evidence, if the Court please, document G-57.

Mr. Wilson: That is an advertisement as of what day?

Mr. Leonard: November 3, 1950.

The Court: It will be received.

(The document referred to was marked G-57 for identification and was received in evidence.)

By Mr. Leonard:

Q. Now, I call your attention to a document marked G-58, Mr. Murray, and ask you if you can please tell us what that is.

(Document handed to the witness.)

[fol. 167] A. G-58 is a photostat from the New Orleans States of February 22, 1951: "New Orleans States founded January 3, 1880."

Q. Is that what is referred to in the newspaper business as "mast-head"?

A. No, sir.

Q. Is that an advertisement?

A. It is a post office statement.

The mast-heads in the New Orleans papers always, as a rule, appear on the editorial pages and they show the name of the editors. That is the mast-head.

Mr. Leonard: I offer in evidence, if the Court please, the advertisement which has been identified and marked G-58.

The Court: It may be received.

(The document referred to was marked G-58 for identification and was received in evidence.)

By Mr. Leonard:

Q. I call your attention, Mr. Murray, to a document bearing No. G-59 for identification.

(The document referred to was marked G-59 for identification.)

By Mr. Leonard:

Q. Can you tell us what that is, please.

(Document handed to the witness.)

A. G-59 is from the November 10, 1949 issue of the New Orleans States. It is an advertisement entitled: "Ten [fol. 168] Prospective Tenants answered this ad.

Q. And it bears the wording "two newspapers at one low cost"?

A. I hadn't seen that. It does read that, sir.

Mr. Leonard: I offer in evidence, if the Court please, the document marked G-59 for identification.

The Court. It will be admitted.

(The document referred, marked G-59 for identification, was received in evidence.)

By Mr. Leonard:

Q. What are your activities with the Times-Picayune Publishing Company, Mr. Murray, relative to the establishment of rates?

A. I have no part in that in any way whatsoever.

Q. That hasn't always been true of your position, though, has it?

A. That has always been true, sir.

Q. Haven't you been consulted on rate changes?

A. I can't remember any specific instance in which I was.

I have been told that the rates are going to be such-and-such, and we make them.

There may have been an occasion where, in some situation, I might have suggested something of the sort, but I don't ever remember sitting down and making out a rate card or playing any part in making one out.

Q. Well, don't you generally attend the meetings that discuss changes in rate?

[fol. 169] A. Not as a rule. They usually don't have them. I wouldn't know when the meetings would take place. Mr. Tims and Mr. Adams and Mr. Ladreyt in the national department, when occasion arises, have been at those meetings. In fact, I can't remember being at any.

Mr. Phelps: If the Court please, I don't want to interrupt this examination. We simply wanted to advise the court that we are ready for Mr. Frank's testimony at any time the Government wants to put it on. If they want to interrupt the testimony of this witness, it is entirely satisfactory with us.

The Court: All right. I suggest we go on with this witness, gentlemen.

Mr. Leonard: Very well, Your Honor.

By Mr. Leonard:

Q. Mr. Murray, I invite your attention to a document which has been marked for identification as G-60.

(The document referred to was marked G-60 for identification.)

By Mr. Leonard:

Q. I wonder if you can tell us what that is, please.

(Document handed to the witness.)

Mr. Wilson: Number, please.

Mr. Leonard: Two.

A. This is an office memorandum from me to Mr. Tims, telling him that I agree with the suggestion made by Mr. Swayze, the Advertising Manager of the States, relative to a discount on furniture advertising picked up by the [fol. 170] States from the Times-Picayune.

Q. Well now, that discount was a special rate, wasn't it?
A. No. It finally eventuated into a new rate.
Q. And went on to your local display card?
A. Yes, in about 1938, I think.
Q. What was your purpose in adopting that special rate?
A. Well, it was to get or secure more business for the New Orleans States.

Mr. Leonard: We offer in evidence, if the Court please, the document which has been identified by the witness and numbered G-60.

The Court: It may be admitted.

(The document referred to, marked G-60 for identification, was received in evidence.)

(Mr. Leonard read G-60.)

[fol. 171] Q. Mr. Murray, I call your attention to a document which has been marked "G-61" for identification, and ask you if you will please tell us what that is.
A. An office memorandum under date of April 15, 1938, addressed to Messrs. Adams, Davis & Muller from Mr. Tims. Shall I read this?

Mr. Wilson: Just a minute. I don't see that this is to Mr. Murray or from Mr. Murray or anything else. I object to the offer of it through this witness. He doesn't seem to be mentioned in the whole letter.

Q. Mr. Murray, were you at the meeting which was held April 14, 1938, in Mr. Nicholson's office?

Mr. Wilson: I haven't heard that there was such a meeting. Is there any evidence to that effect?
The Court: The document referred to a meeting held on the previous day. The document is dated April 15.

A. I was at the meeting.
Q. What transpired at the meeting, Mr. Murray?
A. In a nutshell, Mr. Tims discussed the recommendation made by Mr. Swayze and Mr. Nicholson and acquiesced that we do this thing. That was it.
Q. Did you receive a memo from Mr. Tims on or about April 15?

A. I would imagine that there would be some memorandum to that effect.

[fol. 172] Q. Isn't it the one that you are holding in your hand?

A. You mean in addition to this, or this?

Q. That one.

A. Yes, sir, this is it.

Mr. Leonard: We offer in evidence, if the Court please, the document marked "G-61" for identification.

The Court: It is admitted.

(The document marked "G-61" for identification, was received in evidence.)

(Mr. Leonard read Government Exhibit 61.)

Q. I call your attention to a document marked for identification "G-62" and ask if you can tell us what that is?

A. This is a memorandum from Mr. Tims to Mr. Blackburn, Mr. Swayze, Mr. Muller and myself, telling us: "This letter confirms the meeting held in Mr. Nicholson's office yesterday in which you approved a discount of one cent per line," and so forth.

The Court: That is the same meeting referred to in "G-61"?

The Witness: That is the same one.

Mr. Leonard: We offer in evidence the document marked "G-62" for identification.

The Court: It is admitted.

(The document marked "G-62" for identification, was received in evidence.)

(Mr. Leonard read Government Exhibit 62.)

[fol. 173] Q. Mr. Murray, I call your attention to document which has been marked "G-63" and "G-64" for identification, and ask you if you can tell us what it is, please?

The Court: You are assigning two different numbers to separate pages of the same letter? I think it might be confusing. We will call this "G-63". Is that correct?

Mr. Leonard: Yes, sir.

A. This is a letter by me to Mr. Grover Rothenburg, who has since passed away, who was then the New York head of the firm representing us, and I tell him in connection with the Stein's account—that is a store—a clothing store—"We note from your wire that you are to see Mr. Schulman, and we are hastening to give you information on having secured a little more detailed information containing your wire." This is very difficult to read, but I identify it.

Mr. Leonard: We offer in evidence, if the Court please, the copy of the letter marked "G-63".

The Court: I want to ask you, do you have all of your exhibits marked that you are going to introduce in evidence?

Mr. Leonard: Yes, sir.

The Court: If it is going to cause any confusion——

Mr. Leonard: No, your Honor, it is better to strike that "G-64" off the second page.

The Court: Will there be an exhibit 64 without changing the other exhibits?

Mr. Leonard: Yes sir.

[fol. 174] Q. You have told us that document "G-63", Mr. Murray, is a letter that you wrote?

A. Yes, I did, Sir.

Q. Doesn't this letter demonstrate, Mr. Murray, an instance in which you were using selling pressure on a local manager in order to influence the placing of an advertisement?

A. I wouldn't know in what particular, Sir. In which—where would that be happening, using undue pressure?

Q. I didn't say undue pressure.

A. Well, I thought that you did. I am sorry for it. What did you say, Sir, if you please?

(Question read by reporter.)

A. I used every effort available, but I don't know anything that was outside of the regular way of going after business. I haven't the whole letter in my mind, Sir, but I just—read the letter, or may I read it?

(Exhibit "G-63" handed to witness.)

A. "We would like you to make every effort to get this copy for the Times-Picayune-States combination—"

The Court: It isn't necessary for you to read it out loud.

A. I see nothing in there, Sir.

Q. Well, I will invite your attention then——

Mr. Leonard: We offer Exhibit "G-63" in evidence, your Honor.

[fol. 175] The Court: It is admitted.

(The document marked "G-63" for identification, was received in evidence.)

Q. I call to your attention, Mr. Murray, to document marked "G-64" for identification, and ask you if you can please tell us what that is?

A. This is a letter from Mr. Fred Torres, who used to work for us but who is now in other pursuits locally. It is addressed to me from him, and he tells me that J. B. Harris, the local manager of the Stein's Store called on him today to discuss a letter which he had received from his New York Office.

The Court: Is that dated September 2, 1939?

Mr. Leonard: Yes, your Honor.

We offer in evidence, if the Court please, the document which the witness has identified, marked "G-64".

The Court: It is admitted.

(The document marked "G-64" for identification, was received in evidence.)

Q. This letter, "G-64", follows the document which we discussed as Number "G-63".

(Mr. Leonard read Government Exhibit 64.)

Q. Now there was a suggestion made at the trial yesterday, Mr. Murray, that it was deleterious selling when you tried to switch an account which had been placed with another newspaper; and isn't that exactly what the Times-Picayune was doing here?

[fol. 176] A. I would say it was certainly not, Sir, despite the word "deleterious". None of us had it as yet. We were

all fighting to get it, we were all fighting to get that business for our respective newspapers, and we do go for business, all newspapers that are on their toes, and they hadn't it yet; none of us had it.

Q. So that when you speak of "freezing out the Item", you are using that figuratively?

A. I didn't use the word "freeze" in the memorandum that I wrote. I wrote another word—I said, "This would keep the Item out of the picture." What I mean is that if we get the business, necessarily there will be that much less in the market. We are thinking of ourselves primarily, not necessarily the Item, but it was the Item alone that we were bucking on an account. I would necessarily use it in an office memorandum.

Q. But in your understanding, there is nothing deleterious in that method of obtaining business?

A. Not at all, Sir. That is as old as the newspaper advertising solicitation.

Q. I call your attention, Mr. Murray, to document marked for identification "G-65". Will you please tell us what that is?

A. This is a letter addressed to Mr. Rothenburg by myself, also relative to the Stein account, in which we first got into this subject at all, that there had been no activity in the Stein account, and we found out that there would be, and I so tell him, tell him about it. Well, there is nothing to that, I don't think.

[fol. 177] Mr. Leonard: We offer in evidence, if the Court please, document identified as "G-65".

The Court: It is admitted.

(The document marked "G-65" for identification, was received in evidence.)

(Mr. Leonard read Government Exhibit 65.)

Q. I call your attention, Mr. Murray, to a document marked "G-66", and ask you if you ever saw that before?

A. Yes, I saw that before, Sir.

Q. Would you tell us what it is, please?

A. It is a memorandum from Mr. Tims to Mr. Ladreyt, Mr. Charlton, Mr. Swayze, Mr. Stevens and myself, telling us that effective immediately, which was March 8, 1948,

"We will again accept advertisements for help wanted in our display columns. Such advertisements, however, must be ordered in forced combination."

Q. Now what does the term "forced combination" mean to you as used there?

A. It means that it was necessary that it was run in the New Orleans Times-Picayune and the New Orleans States.

Q. And that term is customarily used in your office, isn't it?

A. Well, we used the word "unit" more than that, "the unit rate."

Q. But you understood it when you saw it in Mr. Tims' memo?

[fol. 178] A. I understood it.

Q. Was this memo of March the eighth a change in policy?

A. No, sir—it was a change because of the fact that we hadn't been running them.

Q. You mean you hadn't been applying the forced combination to help wanted ads?

A. No, we hadn't been taking large help wanted ads on account of the paper shortage in the classified—in the display. They used to go in the classified, so during the paper shortage some of these large shipyard companies would run a full page advertisement if you would so permit.

Q. Well, I call your attention, if you please, to the date of this memo.

A. Well, it is '48, but that same policy was carried through.

Q. There wasn't any paper shortage in '48?

A. No, there was not.

The Court: And that is when you went back to commiting them to use the display columns?

The Witness: Yes, sir.

Q. In forced combinations?

Mr. Wilson: Using them at all.

Mr. Leonard: We offer in evidence, your Honor, document marked "G-66".

The Court: It is admitted.

(The document marked "G-66" for identification, was [fol. 179] received in evidence.)

Q. I call your attention to document number "G-67" for identification, Mr. Murray, and ask you to tell us what that is, please.

A. This is a memorandum to me from Mr. Tims, also to Mr. Charlton, Swayze and Ladreyt, telling that Mr. Tims had authorized the solicitation of Home Finance Company color advertisement for the Times-Picayune and New Orleans States.

Mr. Leonard: We offer in evidence, your Honor, document number "G-67" for identification.

The Court: It is admitted.

(The document marked "G-67" for identification, was received in evidence.)

Q. Now I call your attention to document number "G-67", Mr. Murray, and ask if that represented a change in policy?

A. If I remember—I don't remember too much about that, whether we would say it was a change of policy or not. I know we hadn't taken them and that we finally did decide to take them.

Q. Your recollection is not clear?

A. No, not the basic reason for it.

(Mr. Leonard read Government Exhibit 67.)

Q. Again you are using a term which has been brought up in this litigation and which is also expressed as the unit rate, is that right?

A. Yes. That wasn't my language; that happened to be a memorandum to me. I didn't use it.

[fol. 180] Q. From Mr. Tims' office?

A. That is correct.

Q. I call your attention, Mr. Murray, to document "368" for identification, and ask if you can please tell us what that is.

A. This is a letter of July 12, 1948, over my signature, to Mr. Ed Holliday of the Jann & Kelley office in Atlanta, in which I tell him—do you want me to read it?

Q. No.

A. In which I ask him to try to get the Liggett Drug Store business.

Mr. Leonard: We offer in evidence——

Mr. Phelps: If the Court please, we haven't had a chance to see it. We just this minute got a number, so may we see it before it is admitted in evidence?

The Court: We will take a recess until twenty-five minutes after eleven.

(Short recess.)

The Court: You may proceed.

Mr. Phelps: We have no objection to the offer of Exhibit "G-68".

Mr. Leonard: We offer in evidence, if the Court please, document marked "G-68" for identification.

The Court: It is admitted.

(The document marked "G-68" for identification, was received in evidence.)

[fol. 181] Q. This is a letter which you said you wrote, Mr. Murray, about July 12, 1948?

A. I did.

Q. Make sure that is the one we were talking about.

A. It is addressed to Mr. W. R. Holliday, Jann & Kelley, Inc., Palmer Building, Atlanta 3, Georgia.

(Mr. Leonard read Government Exhibit 68.)

Q. You recall writing that?

A. I did, Sir.

Q. I invite your attention, now, Mr. Murray, to document number "G-69" for identification, and ask if you can please tell us what that is.

A. This is a letter from me under date of November 19, 1949, to Mr. Marcel J. Voorhies, General Manager of the American Sugar Cane League of the United States of America, in which I tell him—I thank him for his hospitality to our Mr. Baxter.

The Court: I think you have identified it.

Mr. Leonard: We offer in evidence, if the Court please, document number "G-69" for identification.

The Court: It is admitted.

(The document marked "G-69" for identification, was received in evidence.)

Q. This letter of November 19, 1949, is addressed to Mr. Marcel J. Voorhies, General Manager, American Sugar Cane League of the United States of America, 413 Whitney [fol. 182] Building, New Orleans 12, Louisiana.

(Mr. Leonard read Government Exhibit 69.)

Q. Now, Mr. Murray, this advertising schedule had already been started, hadn't it?

A. It wasn't a schedule. It was one advertisement that they run once a year, one of those Happy New Year propositions. It wasn't a schedule of any length; it was one advertisement to be exact, and we only did what I thought we should do, try to get the States included, not to have it relegated to the scrap heap, as I said before.

Q. The States has always been hard to sell, hasn't it?

A. No, I wouldn't say that the States is hard to sell. The States—I could go into quite a dissertation, but I don't think you want that. I don't think the States has been hard to sell. I can sell it very easily.

Q. Without the forced combination?

A. Yes, without the forced combination.

The Court: What did you mean down here when you referred to a three-way division of future budgets?

The Witness: I meant that in the future, your Honor, when next year or the year after that they spend this three or four hundred thousand dollars that they include the States.

The Court: By three-way, you meant the Times-Picayune, the States and the Item?

The Witness: Yes, absolutely, because I just didn't think that the States should be forgotten.

[fol. 183] The Court: I see.

Q. Your attention is invited, Mr. Murray, to document number "G-70" for identification. I ask you if you will please state for the record what that is.

A. This is a letter addressed to me under date of March the eighth from Mr. Henry Jann of the firm of Jann &

Kelley, thanking me for my Air Mail letter, sending him a first edition of the Item, and so forth.

Q. Do you recall receiving that?

A. I do, Sir.

Mr. Leonard: We offer in evidence, if the Court please, the document marked "G-70" for identification.

The Court: It is admitted.

(The document marked "G-70" for identification, was received in evidence.)

(Mr. Leonard read Government Exhibit 70.)

Q. There is considerable emphasis in this letter, Mr. Murray, on the subject of page bulk. Now, is that important in the sale of newspapers, page bulk?

A. Mr. Jann traded on it, I never use it in my selling, and I don't see how it is important except in the publishing of the paper.

Q. As far as you are concerned, it doesn't make any difference whether you are selling a twenty-four page paper or a forty-eight page paper?

A. Well, if you are going to print plenty of forty-eight [fol. 184] page papers, and you are trying to make an impression on somebody who isn't too well acquainted with the proposition, when you have a large paper, a formidable looking paper with plenty of news, it is a nice thing to say we had forty-eight pages, but I never used it; I never have used it. That was Mr. Jann's language, not mine.

Q. I call your attention, please, to document number "G-71" for identification. Can you tell us what that is?

A. This is a memorandum from Mr. Tims to me relative to the Life Insurance Institute of America advertising program.

[fol. 185] Mr. Leonard: We offer in evidence document number "G-71" for identification, Your Honor.

The Court: It will be admitted.

(Mr. Leonard read Government Exhibit 71.)

By Mr. Leonard:

Q. In this letter Mr. Murray, you were referring to the forced combination on the sale of general advertising, were you not?

A. The unit rate; yes, sir.

Q. And you stated that it was something that had been done by twenty newspapers throughout the country?

A. In that I was in complete error and I feel quite humiliated. It is some two hundred odd, or three.

Q. Mr. Murray, were you present at the meetings which were described yesterday with reference to the proposal to adopt the forced combination rate on general advertising?

A. No, sir.

Q. You attended none of those?

A. None of them.

Q. And your recollection is clear?

A. Pretty clear. I don't remember any of them.

Q. Mr. Murray, do you know what a "single trader" is?

Mr. Phelps: If the Court please, I think that the witness' understanding of legal doctrines of that nature is not exactly relevant in this law suit.

The Court: What is the purpose of the question?

[fol. 186] Mr. Leonard: Your Honor, this defendant has filed an answer in which he states that The Times Picayune Publishing Company is either a single trader or a sole trader, and I want to inquire as to what he means by it.

Mr. Phelps: If the Court please, I don't believe that either of those expressions is used in the answer. It may be used in briefs.

Mr. Wilson: Filed by counsel.

The Court: I will sustain the objection.

Mr. Leonard: We will withdraw the question.

We will offer Mr. Murray for examination.

Direct examination.

By Mr. Phelps:

Q. Mr. Murray, in your testimony on direct examination you stated that members or some of your staff got copies of the Item, apparently studied it or read it. Will you tell us what the purpose of that was?

A. It is not new or novel with us. Every newpaper in the United States, just as quickly as they can get the other papers in the town, or if there are two or three, to see what new accounts are breaking, what business is breaking. Those are clipped by a man with shears every day. If the man is not in it is placed on his desk so he can pursue it. If it is a brand new account he is assigned to cover that account, to see if we can get it,——

Q. Do you subscribe to other papers for that purpose? [fol. 187] A. Oh, yes.

Q. Will you tell the Court how many, approximately?

A. A minimum of thirty or forty; and some of those we don't subscribe to go upstairs to our editorial department. We go and get those to clip. We have a person who does nothing but clip advertisements so that we might see that some account is breaking in another town, we want to find out why it doesn't break here, if they have distribution.

Q. Do you make any effort to follow campaigns in media other than newspapers?

A. Yes, we do. We follow it in magazines. We get many a lead from a magazine; and, I might also add, from television. We right recently got some business, the thought on which emanated from television. We saw something which we went out and used. We saw a show on television which gave us a lead on television which gave us a lead to an ad.

Q. Mr. Murray, with reference to Government Exhibits 54 and 56, would you examine those carefully and tell the Court how many newspapers The Times-Picayune Publishing Company says it is selling?

A. This first exhibit, "G-54" " . . . appears in a quarter million newspapers: daily 270,636; on Sunday 281,710.

Q. Will you refer to the other exhibit.

A. "If you want answers fast, refer to the Times-Picayune."

Q. My question is, is there any reference to the number of papers published by The Times-Picayune Publishing Com- [fol. 188] pany? Would you read all of it?

A. Circulation 281,710 on Sunday; daily, 270,636.

Q. Would you examine it again and give me any additional references to newspapers?

A. Circulation, sir? "As a matter of fact, your advertisement appears in a quarter of a million newspapers."

Q. Suppose you read that to the Court.

A. "As a matter of fact, your ad appears in more than a quarter of a million newspapers."

Q. Thank you.

Mr. Leonard: Which were you reading from?

A. The large one. "G-56" "As a matter of fact, your ad appears in more than a quarter million newspapers! Nowhere else in New Orleans . . . in no other manner . . ."

Mr. Leonard: Just a minute here, Mr. Murray. Haven't you overlooked the language down at the center here: ". . . because through these two newspapers (you get both at one low cost)"?

A. I will read the whole of it:

> "Rent . . . trade . . . buy . . . or sell . . .
>
> . . . Chances are your answer's in a Times-Picayune and States want ad. Thousands have used want ads with speedy results . . . answers by the dozen . . . And there are answers waiting for your ad in The Times-Picayune and States . . . . . because through these two newspapers (you get both at one low cost) [fol. 189] you reach tremendously more people who may be looking through the ads for just what you have to offer . . . As a matter of fact, your ad appears in more than a quarter million newspapers! Nowhere else in New Orleans . . . in no other manner . . . can you reach so many people . . . at such a low cost!"

By Mr. Phelps:

Q. Mr. Murray, I direct your attention to Government Exhibit 55; would you tell us what that indicates? whether the States is a six-day newspaper or a seven-day newspaper?

A. "In your evening newspaper bargain: six great days of the big New Orleans States, Monday through Saturday, delivered to your home for 25 cents: less than a nickle a copy. The States' evening competitor charges 30 cents for six days.

Q. Is there any other reference in that advertisement to whether the States is a six-day or a seven-day paper?

A. In this box to the right on the lower space it says, "Seven-day States, including Sunday, also a bargain."

Q. Directing your attention to Government Exhibit 58, would you tell the Court whether there are any rates quoted thereon for the seven-day States?

A. "Week: daily and Sunday, 40 cents."

Q. Mr. Murray, are you familiar with the manner in which the by-laws of the Audit Bureau of Circulation classify publishers who publish morning and evening?

A. No, I am not.

[fol. 190] Mr. Leonard: Now, I object, Your Honor.

Mr. Phelps: Well, the witness is not familiar with it so I will withdraw the question.

A. I am not familiar with it.

The Court: I was just going to make the observation, this witness is on under cross-examination.

Mr. Phelps: This had reference to the witness' statement there were different ways of referring to a publisher that publishes morning and evening. In some instances it was called "editions"; in some instances it was called "newspapers."

I will withdraw the question.

The Court: It seems to me there is no question with respect to this entire examination. Is this cross or direct? He was called on cross. I take it you are going to call him as your witness.

Mr. Phelps: We will, eventually. We wanted, for the record, to clear up the matter. Under Rule 43(b) we are entitled to question him on the matters within the scope of the direct examination.

Mr. Leonard: We agree with that interpretation, Your Honor; but only upon the matters covered.

By Mr. Phelps:

Q. Mr. Murray, directing your attention to Government Exhibit 68, would you tell the Court whether the Liggett's account referred to is a retail account, a general account, ——

A. It is a retail account, sir.

Q. Directing your attention to the first paragraph of

[fol. 191] that exhibit, would you explain to the Court what you meant by the use of the word "monopoly?"

A. May I read the first paragraph?

"For years past the Times-Picayune enjoyed practically a monopoly on the Liggett Drug Store advertising."

It was a word in which I should have used "exclusive." The word was, while it was descriptive, it perhaps was not the word to use because we did have that account exclusive in the Times-Picayune for twelve—ten years, I am quite sure, running up to as much as 37,000 lines a year; sometimes, exclusive. And that is what I meant. We had lost it. We were jealous of the account and we wanted to get it back.

Q. Directing your attention to Government Exhibit 64, relative to the Stein's account, would you tell us what that exhibit reflects as to the wishes of the customer, the express wishes of the customer as to what he intended to buy?

A. The local manager of Stein's store here, Mr. Harris by name, told us that he had requested from his New York office to recommend us—he would recommend—Let me read it. "Mr. Harris, local manager—"

Q. You can tell us in your own words.

A. He wanted one paper selected. He wanted the local manager to select for him what one newspaper to use.

The Court: What number is that?

A. 64.

[fol. 192] The Court: Didn't he first want the local manager to decide whether he was going to use local advertising at all and then decide which newspaper? That is my recollection of the document.

A. I don't remember.

The Court: Read the first paragraph.

A. "Mr. J. B. Harris, local manager of Stein's, called me today to discuss a letter which he had received from his New York office in which his home office wanted to know if he would recommend newspaper advertising and if so what one paper he would recommend, and also the rates, et cetera, of that newspaper."

By Mr. Phelps:

Q. With reference to page 2 of Government Exhibit 70, would you examine the second to the last paragraph, the last sentence of that paragraph, and explain to us what you meant?

The Court: What is "G-70?" Tell us that first.

A. This is a letter from Jann & Kelley. It is to me from Mr. Henry Jann.

Mr. Leonard: Well, I object, Your Honor, to this witness explaining what Mr. Kelley meant. He did not write the letter.

Mr. Wilson: What does he understand it to mean?

By Mr. Phelps:

Q. Would you explain to us what that sentence meant to you?

Mr. Leonard: I object to that, Your Honor. I don't believe that is helpful. I certainly don't think it is necessary [fol. 193] to clear up the language of the letter. I think that document speaks for itself.

The Court: Which is the sentence?

Mr. Phelps: It is the last sentence in the second to the last paragraph on page 2.

The Court: "That being the case I hope we will gradually see him slipping out of the Item."

I sustain the objection to the question.

By Mr. Phelps:

Q. With reference to Government Exhibit 71, dealing with Life Insurance Institute of America, could you tell us the circumstances, generally and briefly, surrounding your writing that memorandum?

Mr. Leonard: Now, if the Court please, I object. I don't believe that is the proper approach after the witness has been cross-examined. I think that that question is one that properly belongs when he is examined directly.

The Court: The objection is overruled. Proceed.

A. What is the question?

(The Reporter read the last question.)

A. Briefly, I talked to Mr. Fisher Simmons who was one of the underwriters who knew the situation that we wanted to get this—retain this business that we had had for years, and not have it lost; that it was coming up before a meeting and he promised to do all that he could to retain it for us.

That is the substance of it.

Mr. Leonard: Well, if the Court please, I renew my [fol. 194] objection and move to strike that answer as being merely a restatement of what is contained in the letter.

Mr. Phelps: I think for what it is worth we are entitled to have it in the record, if the Court please.

The Court: I think the witness is explaining that the purpose of this meeting with Mr. Fisher Simmons was not to get business but to keep certain business that they already had.

A. That is right.

The Court: I overrule the objection and deny the motion to strike.

Mr. Phelps: If the Court please, we have no further examination of Mr. Murray.

Mr. Leonard: Nothing further, from Mr. Murray.

The Court: You are excused.

(Witness excused.)

Mr. Flurry: The Government calls Mr. Frank.

Lawrence J. Frank a witness called by and on behalf of the Government, having been sworn previously, was examined and testified as follows:

Direct examination.

By Mr. Flurry:

Q. Will you please state your name and address for the record?

A. Lawrence J. Frank, Jr., 8415 Palmetto Street, New Orleans.

[fol. 195] Q. What is your occupation, Mr. Frank?

J.]

A. I am a Special Agent of the Federal Bureau of Investigation.

Q. How long have you been occupied in that capacity?

A. Approximately thirteen years.

Q. What educational experience have you had before going with the FBI?

A. I have a Bachelor of Commercial Science Degree in Accounting and I also was Office Manager for a wood preserving plant, handling all their books and records prior to my entry on duty with the FBI.

Q. Have you been engaged in accounting work with the FBI?

A. Yes, sir.

Q. Were you qualified to do certain work with reference to the records of the Times-Picayune Publishing Company in New Orleans by the Anti-Trust Division?

A. Yes, sir.

Q. When was that work done, Mr. Frank?

A. It was done during January and February of 1951.

Q. Will you explain what you did over there at the Times-Picayune Office

A. In accordance with request from the Anti-Trust Division, we obtained photostatic copies of certain financial statements of the Times-Picayune Publishing Company, for 1932, '33, '34. We also obtained annual statements for '48, '49 and '50 of the Times-Picayune Publishing Company; and we obtained photostatic copies of monthly financial [fol. 196] statements for '48, '49 and '50. We also obtained certain data from their payroll records of the number of employees, broken down between the newspapers, and broken down by departments within those newspapers. We obtained the hours that they worked in a given month, regular hours and overtime hours. In addition to that information, we obtained certain data concerning their publishing, the number of pages published, newsprint used, white and colored, pounds of ink used, data concerning their advertisement, broken down as to general, display and classified, data concerning their circulation.

Q. Did you take all of that information direct from the records of the Times-Picayune Publishing Company?

A. Yes, sir.

Q. Have you compiled that information in various folders?

A. Yes, sir.

Q. I hand you a folder marked Government Exhibit 72. I will ask you to state to the Court what that contains, and to state whether or not that is one of the folders which was made up.

A. This folder contains the monthly financial statements for 1948 for the Times-Picayune Publishing Company. This is the data that was provided us in the Auditor's Office of the Times-Picayune Publishing Company.

Q. I hand you Government Exhibit 73 and ask you to state what that is and whether or not you took them from their records.

A. This contains the monthly financial statements for 1949, which were provided by the Times-Picayune Publish-
[fol. 197] ing Company. This contains the documents that were provided.

Q. I hand you Government Exhibit 74 and ask you to state what that is.

A. This folder contains the monthly financial statements for 1950 for the Times-Picayune Publishing Company, and these are the documents that were provided us by the Times-Picayune Publishing Company.

(The documents were marked "G-72", "G-73" and "G-74" for identification.)

Q. Did you obtain any records for the year 1947?

A. No, sir.

Q. Now I hand you Government Exhibit 75 and ask you to please identify that and state to the Court what it is.

A. This is a monthly summary and supporting schedules as to the number of employees, regular and overtime hours worked, by department, during the year 1949, for the New Orleans States.

Q. Are these figures contained in that folder, are they copies of the records of the Times-Picayune Publishing Company?

A. These are copies of figures obtained from their records.

Q. Will you explain how you went about getting these figures?

A. The Auditor's Office of the Times-Picayune made available to us certain payroll records, time sheets and the information contained in these schedules was obtained from those documents. We obtained the number of employees from the various time sheets, of the general payrolls, and we also obtained the hours worked and overtime hours [fol. 198] worked from these timesheets and payrolls. In some instances, the time sheets where not available on all individuals within a given department, and in that instance, that individual was counted as having worked a minimum of forty hours in that particular department.

(The document was marked "G-75" for identification.)

Q. Now I show you Government Exhibit 76 and ask you to identify that.

A. This is a monthly summary and supporting schedules of the number of employees, regular and overtime hours worked, by departments, during the year 1949 for the Times-Picayune. These figures were obtained from the records of the Times-Picayune Publishing Company in the same manner as those we obtained for the New Orleans States.

Q. Were these figures prepared directly by you or under your supervision?

A. They were prepared under my supervision, yes, sir. I prepared some of them and others, Accountants assisting me, copied some of them.

Q. Were you present at the time the work was proceeding?

A. Yes, sir.

Q. Who assisted you in that work?

A. Mr. Charles Carson and Mr. James Schmidt, both Accountants in the Federal Bureau of Investigation.

(The document was marked "G-76" for identification.)

[fol. 199] Q. I hand you, Mr. Frank, Government Exhibit No. 77 and ask you to please identify that.

(The document referred to was marked G-77 for identification.)

(Document handed to the witness.)

A. This folder contains monthly summaries of reading matter, advertising and newsprint circulation, etc., for the years 1948, 1949 and 1950 for the Times-Picayune and New Orleans States.

Q. What was the source of your information for those figures?

The Court: I don't understand. You say, a summary of reading matter.

The Witness: A summary as to the count. There are columns of reading matter, lines of retail advertising, lines of general advertising, lines of classified advertising.

This information was obtained from records provided by the Auditing Department of The Times-Picayune Publishing Company.

By Mr. Flurry:

Q. How did you proceed in making your compilation of those figures?

A. Mr. J. H. Lagarde, the auditor, provided the various records where this information was recorded and we took a transcript of that information from their records.

The Court: Just these tabulations? Does he represent tabulations?

[fol. 200] The Witness: Yes.

By Mr. Flurry:

Q. For what year?

A. 1948, '49 and '50.

Q. Are the figures contained in that document—Do they constitute compilations by you or calculations? Or are they the actual figures taken from the records of the company?

A. The actual figures taken from the records of the company.

Q. I show you Government Exhibit No. 78 and ask you to please identify that for us.

(The document referred to was marked G-78 for identification.)

(Document handed to the witness.)

A. These are photostatic copies of annual financial statements for the years 1948, '49 and '50 of The Times-Picayune Publishing Company, and these were——

Mr. Wilson: Excuse me. May I have the beginning of that answer again?

(The Reporter read the last answer.)

By Mr. Flurry:

Q. Are those your compilations? Or are they records of the company? Copies of records of the company?

A. They are copies of the records of the company provided us by the Auditing Department of The Times-Picayune Publishing Company.

Q. I show you Government Exhibit No. 77 and ask you [fol. 201] to please identify that for us.

The Court: Did you say 77?

Mr. Flurry: Seventy-seven. I beg pardon. It should be 79. He has already identified 77.

(The document referred to was marked G-79 for identification.)

(Document handed to the witness.)

A. This folder contains photostatic copies of annual financial statements for the years 1932, '33 and '34 of The Times-Picayune Publishing Company. These photostats were also provided by the Auditing Department of The Times-Picayune Publishing Company.

The Court: What years did you say?

The Witness: 1932, '33 and '34.

By Mr. Flurry:

Q. Are those simply copies of the records of The Times-Picayune Publishing Company? Or are they calculations by you?

A. They are copies of The Times-Picayune Publishing Company records that were made available to us by the Auditing Department.

Q. Are the only documents here involving any calcula-

tions, whatsoever, by you the document with respect to man hours?

A. We prepared summaries from the various schedules that we took from their records.

The Court: That would be 75 and 76, employees' records? Monthly summary of employees' records?

A. Yes, sir.

[fol. 202] By Mr. Flurry:

Q. I believe you explained a moment ago just how you did that?

A. Yes, sir.

Mr. Flurry: We offer Government's Exhibits 72, 73, 74, 75, 76, 77, 78 and 79 in evidence, Your Honor.

Mr. Wilson: If the Court please, I would like a chance to examine those documents during the noon recess before the Court rules upon them. I have not seen them; and while I assume they are what the gentleman says they are, I would at least like an opportunity to look at them.

The Court: That is a reasonable request.

Mr. Flurry: I should like to explain to the Court, in order that there may be no inference, that the Government has withheld these documents. They, of course, would have been available to the Defendants at any time; but most of them consist——

The Court: I don't understand there is any suggestion of withholding them. He wants an opportunity to examine them.

Mr. Flurry: We have no objection to that.

The Court: I am sure you haven't.

Mr. Flurry: We just want to make our position clear. We understood in the pre-trial conference and Mr. Phelps stated, I believe it was, that they would have no objection to the FBI accountants' work.

The Court: There is no objection, now.

Mr. Flurry: All right.

[fol. 203] By Mr. Flurry:

Q. I show you again Government Exhibit No. 72; Mr. Frank. I understood in your testimony to state that the record referred only to 1948, '49 and '50.

I will ask you to refresh your recollection by looking at that and see if you have not included, also, 1947.

(Document handed to the witness.)

A. Yes, sir. There is a comparison statement made, a comparative statement made between the years '47 and '48, and those figures for '47 are included in the '48 financial statement.

The Court: What exhibit is that?

Mr. Flurry: That is 72, Your Honor.

The Court: Is that a monthly financial statement for the year 1948?

Mr. Flurry: Yes, Your Honor.

The Court: I see.

By Mr. Flurry:

Q. And those figures are included upon the copies of the same statements which you obtained from The Times-Picayune Publishing Company, rather than your calculations?

A. Yes.

Mr. Flurry: You may cross examine.

The Court: Do you have any further questions?

Mr. Flurry: No further questions, Your Honor.

The Court: Do you need any additional time to look at [fol. 204] those records?

Mr. Wilson: Would two o'clock be all right, Your Honor?

The Court: Very well. We will recess until two o'clock.

(Whereupon, at 12:30 o'clock, p.m., a recess was taken until 2:00 o'clock, p.m. of the same day.)

[fol. 205] AFTERNOON SESSION

COLLOQUY BETWEEN COURT AND COUNCIL

The Court: You may proceed.

Mr. Kramer: If the Court please, Mr. Flurry has been delayed a moment. He hasn't gotten back from lunch.

Mr. Phelps: If the Court please, while we are waiting, it would be a great facility to counsel for defendant if Government has no objection, if they would let us have some idea of the order of witnesses we might have so as not to have a recurrence of what happened this morning.

Mr. Kramer: I would be delighted to do that, your Honor. I don't have my list here, but my memory, I think, will give you substantially the order. Following Mr. Frank, Mr. Tims will be on the stand as an adverse witness. Following Mr. Tims will be a considerable number of national advertising agents, space buyers. We are hopeful that we can finish with Mr. Tims in time to permit us to keep on schedule with respect to these people, because these are the out-of-town people. If we find we are unable to do so, we may decide to interrupt Mr. Tims' testimony, although we don't think that will be necessary.

The Court: When do you intend to start with these out-of-town witnesses? On the third?

Mr. Kramer: We intend to start with them either on the third or possibly late tomorrow.

The Court: Some of them have been subpoenaed?

Mr. Kramer: A few of them have been subpoenaed for [fol. 206] tomorrow because we didn't want to run out of witnesses. Following the national advertisers, we propose to call Mr. Houghton, an employee of the Department of Justice, whom we shall qualify as an expert, and at that time we are going to request the Court to permit us to divide Mr. Houghton's testimony in two parts. If the Court is agreeable to that, the first part consists of certain lineage and other statistical studies he has made in the New Orleans Newspaper Field.

Mr. Phelps: We have no objection to dividing the testimony. We would normally like to cross-examine on both times, although we would like to reserve our right to hear

the initial testimony and possibly reserve all of our cross-examination.

Mr. Kramer: Any arrangement that is agreeable with your Honor. Following Mr. Houghton, we propose to call certain classified and local display witnesses from New Orleans, and following them, we propose to call the newsboy witnesses. Then Mr. Houghton will be returned to the stand, if the division is acceptable, and will testify concerning twenty-three (23(h)), the financial accounting problems. I may have omitted somebody but——

Mr. Phelps: I think you left out Mr. Coleman.

Mr. Kramer: Mr. Coleman I include as part of the newsboys.

The Court: Since there has been no objection to the division of Mr. Houghton's testimony, I see no reason why it should not be permitted.

Mr. Phelps: Mr. George Nelson.

[fol. 207] Mr. Kramer: Whether we need Mr. Nelson depends substantially upon Mr. Tims' testimony, which of course, we cannot anticipate. It may not be necessary to call Mr. Nelson. If it is, he will precede the classified advertisers and follow the national advertising agencies.

Mr. Phelps: There are one or two other matters. There were two witnesses on retail or on local display. I don't believe you specified when you intend to bring that up.

Mr. Kramer: They follow the classified.

Mr. Phelps: I don't like to ask for too much, if the Court please, but it would also facilitate us in connection with out-of-town witnesses, and possibly facilitate them also, to have the order of the out-of-town witnesses.

Mr. Kramer: We will be delighted to give you the order that we now plan to use, but we can't guarantee that we will use them that way.

The Court: Why are you interested in that?

Mr. Phelps: We would be interested in that, if the Court please, because we are interested in having all of the accounts rather than any isolated account that the Government might have selected for its own examination.

Mr. Kramer: If the Court please, I think we could say for the record that we have examined the general advertising rate cards of the Times-Picayune Publishing Company

handed to us by Mr. Wilson, counsel for defendant, this morning, and we find that there are now in the record [fol. 208] offered by the Government photostatic copies or printed copies of each of these cards except two. We have copies of the two, and I, therefore, return to defendant's counsel with thanks the cards that he handed me this morning. These two cards that we did not have, I dare not offer now because again our documents are numbered through Mr. Tims' testimony, I believe, but when Mr. Tims' testimony is completed, I shall then offer them so that we will have a complete set from 1940 through February 2, 1950, in the records.

Mr. Phelps: May I ask one more favor before we start? Mr. T. J. Adams wasn't mentioned in the list of witnesses. Are you planning to call Mr. Adams?

Mr. Kramer: Mr. Adams' testimony related to the 23(h) charge and will probably precede that of Mr. Houghton, the second time.

Mr. Phelps: In connection with 23(h), our sub-paragraph 3, the Government in its brief, stated that it did not propose to introduce any evidence on that point. Are we to understand that that is no longer an issue in the case?

Mr. Kramer: That is correct.

The Court: What is 23(h)?

Mr. Kramer: It is the allegation that the defendant had increased the page content of the States without corresponding justification, along those lines.

The Court: I see. Increased the size of the paper?

Mr. Kramer: That is right. That issue is withdrawn.

[fol. 209] Mr. Wilson: If the Court please, on the exhibits that were offered this morning, defendants have no objection to 78, 79, 74, 73 and 72. I would like to reserve my objections on 75, 76 and 77 until I have had an opportunity to cross-examine this witness, and I may ask to reserve the objection until we can check these figures. These are work sheets and calculations that we have never seen before, and I found that in the Noon Recess I couldn't possibly check the accuracy of the figures. I need to know his method on some of it before I can start in to check.

Mr. Flurry: We have no objection.

The Court: Government's Exhibits 72, 73, 74, 78 and 79 may be admitted at this time.

(The documents previously marked "G-72", "G-73", "G-74", "G-78" and "G-79" for identification were received in evidence at this time.)

Mr. Wilson: Of course, I also reserve my right to file a motion to strike all of these exhibits on grounds of irrelevancy and immateriality if the testimony develops that to be the case.

Lawrence J. Frank resumed the stand.

Cross-examination

By Mr. Wilson:

Q. Mr. Frank, just so that I may be entirely clear about the records, as I understand, what has been produced here in folders, marked 72, 73, 74, 78 and 79, those are merely photostatic copies of financial statements prepared by the [fol. 210] Times-Picayune Publishing Company and furnished you from that office for the various years shown there?

A. Yes, sir, that is correct.

Q. Now, you examined the records over there of the Times-Picayune Publishing Company for several weeks, did you not?

A. Yes, sir.

Q. And you had with you, you think, two assistants?

A. Two assistants, yes, sir.

Q. In making your examination of the records, did you do any auditing of those records, or did you merely copy figures that you found in various records?

A. We merely copied the figures that we found in the records. We performed no auditing functions whatsoever.

Q. And, as I understand it, all of the records of the Times-Picayune Publishing Company were made available to you?

A. Yes, sir.

Q. In making your studies, you made no attempt to make any time studies within the plant as to operations of any department, did you?

A. We obtained the payroll data, the hours worked, number of employees, broken down by the regular hours and the overtime hours in each department for each paper.

Q. Well, now, let me understand that, Mr. Frank. Those payrolls, you took certain payrolls which were labeled at the top of them "States' Payrolls", did you not?

[fol. 211] A. If they weren't labeled, we had someone identify them as to the distribution of the hours and the individuals working. Some of them were not so identified.

Q. Well, now, which payrolls were not identified?

A. Well, as I recall, I think the composing room was one that was not identified. That breakdown was differentiated between day and night. I believe some of the day employees were chargeable to the States and the night employees chargeable to the Picayune. I mean, as far as them definitely being headed one paper or the other, some of them were not that way.

Q. Well, what are the shifts there in the composing room?

A. I wouldn't be able to answer that as far as the hourly shifts are concerned. I know that they did have their payroll schedule broken down day and night.

Q. And did you make any attempt to determine within the composing room whether the day shift worked on one paper or the other?

A. No more than what they told us the breakdown would be.

Q. Well, now, who did you talk to there about the breakdown?

A. Mr. Lagarde.

Q. And to what extent did you vary the States' payroll from what appears to be the day payroll?

A. I don't understand you.

Q. Well, you said you had a day payroll and a night pay-
[fol. 212] roll. Didn't you find that most of those payrolls that were marked States' payrolls were your day payrolls?

A. Well, not necessarily. I know in the composing room they were so indicated, various operations in the composing room. Those that reflected operations in the daytime, we were told were chargeable to the States, and

those that reflected expenditures on labor operations at night were chargeable to the Picayune.

Q. Well, then, if I understand you correctly, the result was that the night payroll was charged to the Picayune and the day payroll was charged to the States?

A. That is my recollection of it now, yes, sir.

Q. All right. Now did you find out that the financial page, which is one of the biggest jobs in the composing room, was all set on the day payroll?

A. No, we didn't go into any method that they might have used in the distribution of this. We took it as they had reported it on their records and on the basis of how they identified the distribution.

Q. Well, you took whatever the arbitrary definition of the payroll was rather than attempt to make any time studies or to make any determination as to which paper the people were actually working on?

A. Yes, sir. We made no studies of the way they distributed their hourly basis or any other basis for which they distributed at all. In other words, if we were told that that was chargeable to the States, we took it as being chargeable to the States; if it was chargeable to the [fol. 213] Picayune, why, we took the records as they were. We didn't make any studies at all.

Q. And Mr. Lagarde, just to get matters straight, Mr. Lagarde is the Assistant Auditor or Auditor now?

A. I think he is the Auditor now. At that time he was the Assistant Auditor.

Q. And when he said chargeable, he was telling you how they charged those payrolls when they made up the financial statements that are made up here, was he not?

A. I assume that he was.

Q. That is what you understood him to mean?

A. Yes, sir.

Q. And you didn't understand that he meant that they were chargeable because they worked for the States they were chargeable because that was their method of bookkeeping over there?

A. That was the way they had charged it.

Q. So no account is given in your figures for the fact that the financial page is set on the States' payroll, and yet

is used in the Times-Picayune, the racing results are set on the Times' payroll—or on the States' payroll and used in the Times-Picayune, the baseball scores are set on the States' payroll and used in the Times-Picayune. Your figures do not reflect any of that, do they?

The Court: Is that a question?
Mr. Wilson: I believe it is, Sir.

Q. Your figures do not reflect any of that?
[fol. 214] A. Unless it was charged on the payroll as to the States or the Picayune, we made no special column or anything else for the labor that might have been charged to one paper and the results that might have been used in connection with another paper.

Q. Right. And I take it the same is true as to the amount of work which the composing room, day shift, did on the Sunday paper? That is, you made no attempt to eliminate work done on the Sunday paper or the day shift in the composing room?

A. No. If it was shown on the composing room payroll as chargeable to the States, we took it as States' expenses.

Q. Well, now, there are other operations in there which are exactly the same type and I don't want to belabor this point, but the same situation is true as to the stereotype room, is it not, where work is done on the dayshift, the plating is done that goes on the financial page, the plating is done that goes on the sports results, the plating is done that goes into the Sunday edition, it is still true that either because it was marked States' payroll or because it was told to you that it was charged as States' payroll in the financial statement, you charged it as States' time?

A. We took the time on that basis. However, as I recall—I believe it was the stereotype, they also had a nickeling department in there——

Q. Which is eliminated because it nickels the colored Sunday comics?

A. No charges of hours or time in the nickeling depart-[fol. 215] ment was charged to the States. We were told that that was all chargeable to the Times-Picayune in that particular department.

Q. It had all been charged that way?

A. Yes, sir.

Q. And their job was nickeling the plates for the Sunday comics, was it not?

A. Well, I didn't go into the technical aspects, the processing.

Q. As far as you know, there is no reason to have a nickeling room except to turn out comics on Sunday?

A. No, sir, I don't know.

Q. Now, let's take the photo engraving room. Did you make any study of the amount of time spent during the day shift in making photo engraving for the Times-Picayune or for the Sunday papers, or did you simply take that payroll in the same way as being the day payroll chargeable to the States?

A. We took the payrolls as they were captioned. If it was chargeable to the States, we took it as part of the States' time; if it was charged to the Picayune, we took it as Picayune time.

Q. Well, now, we come down to the mail room, which is another item.

[fol. 216] Mr. Wilson: If the Court would care to follow this: The Times-Picayune and the States are both broken the same way, and it might be helpful to look at one of them.

The Court: All right.

By Mr. Wilson:

Q. As I understand your figures on the mail room, you took the daytime mail room and charged that to the States? Is that right?

A. Well, if it was so distributed on the pay roll sheet, we did.

Q. In other words, if it was marked "States" on the payroll sheet, that is the way you took it?

A. We didn't attempt to analyze the time that any of these individuals work. In other words, if the pay roll said "States," we took it as States. If the pay roll said Times-Picayune, we took the time and the hours, premium and regular, as applicable to the pay roll in the manner in which it was specified.

Q. Well then, the time you were in there, Mr. Frank, didn't you discover that a time study had been made of that States pay roll in the mail room and it was developed that over 50 percent of the time spent in there was spent stuffing the Sunday edition?

A. I believe that there was some mention made that a lot of extra wage pay roll which they had was all chargeable to the Sunday paper.

Q. But it was actually charged to the States payroll?

A. No, sir. Where we were told that it was chargeable [fol. 217] to the Times-Picayune for the Sunday paper, why that is the way we distributed the time in our analysis there.

Q. You came up with exactly the same pay roll figure in these figures, didn't you, Mr. Frank, as that which is shown on our pay roll over there for the daytime pay roll? That is the very figure you have got right there, isn't it?

A. Well, if it is the States pay roll, yes. I presume——

Q. That is the figure?

A. Uh-huh.

Q. But weren't you told that over 50 percent of the time of that pay roll was spent in stuffing Sunday editions for the Sunday paper and you know that goes on all through the week? You were over there for many weeks.

Mr. Phelps: Excuse me, if the Court please.

A. As far as we know, we made no study, whatsoever, of how they handled their labor. If they told us that that item or the extra wages pay roll for stuffing the Sunday paper was chargeable to the Picayune, we assumed that that was the way it would be reflected on the salaries or any other expense item or charge that they might have made. We didn't examine the mail room to see in what proportion these men were utilized.

Q. And you had no information, then, that those pay rolls, as set up, were set up on an arbitrary basis and did not accurately reflect the time spent on the various editions of the paper?

A. I don't recall that we ever discussed it.

[fol. 218] Q. Did you have a discussion with Mr. Tims in his office before you started this audit over there?

A. Yes.

Q. And at that time, didn't you discuss whether these figures in these financial reports accurately reflected expenses and revenues?

A. I don't recall that we did, no, sir.

Q. You don't recall being told that those were arbitrary figures that had been used by the company for a number of years, arbitrary breakdowns used for their own benefit?

A. No, sir. I don't.

Q. Well now, you allocated under the heading "Advertising" in here, "Advertising Expense"—You allocated expense under "Classified Advertising" to the New Orleans States, did you not?

A. Yes, sir.

Q. You were familiar with this rate setup sufficiently to know that since 19—around 1935 that advertising on the classified basis was only sold as a unit in the Times-Picayune and States?

A. We didn't go into the method of selling.

Q. No. No, I didn't ask you that. I mean: Did you know that?

A. No, sir, I didn't.

Q. You did not know that it was sold only as a unit?

A. No, sir.

Q. So, your figures were drawn, I take it, on the theory that these people were working for the States in selling classified advertising?

[fol. 219] A. As far as their time was concerned, we broke that down according to the specifications on the pay roll.

The Court: In other words, you made no attempt at any time to reclassify or reallocate any costs?

The Witness: No, sir.

The Court: You simply tabulated what appeared on the records of the company?

The Witness: It was merely a transcription from their records that we obtained in these schedules.

The Court: I see.

By Mr. Wilson:

Q. In connection with your editorial expense, you gave no credit or weight to the fact that certain people on the States editorial staff also worked on the Sunday edition, did you? That is, Fitzpatrick, the editor, Martinez, Dufour, all of those men. We all know them. They contribute to the Sunday paper.

If it was chargeable to the States, we took it as States.

The Court: When you say "chargeable," you mean if it was charged to the States, don't you?

The Witness: No, sir.

The Court: If the company had charged it that way, then you took it that way.

The Witness: If they broke it down as being so much time that was devoted to the publication of the States, why, that is the way we took the hours.

[fol. 220] The Court: When you say that it was chargeable, an inference might arise that you considered it chargeable. It was the manner in which they handled it? Is that correct?

The Witness: Yes, sir.

The Court: I see.

By Mr. Wilson:

Q. In other words, it just comes down to this: That if the individual was on a pay roll labeled "States" or if he was on a pay roll which Lagarde told you they had charged to the States in these financial statements, why you accepted that as a fact and copied those figures down?

A. That is right.

Q. Now, after you got all of these figures copied down, did you attempt to make any allocations of cost with them? Did you attempt to do anything further with them than simply to set them out in these exhibits?

A. We set them out. That is all. We made no studies, whatsoever, or made no attempt to allocate any of their costs.

Q. Well now, we have another—Wait a minute. I want to ask you one more question about this.

I am not clear as to how you handled these studies for

any year other than '49. Did you just make a study of '49?

A. The year '49 was all that—At one time, we were considering '48 and '50; however, the department modified its request to some extent and we only completed [fol. 221] the '49.

Q. So, your study, in so far as Exhibit 75 and I guess it is 76——

The Court: That is correct.

By Mr. Wilson:

Q. ——75 and 76 are concerned is only a study of the pay rolls for the year 1949?

A. It is complete for '49.

Q. Well now, just what is added? I mean, what have you got in for——

A. We have some of the figures for '49 and '50 that we had started taking before this modification was given; in so far as the entire——

Q. Are they included in these?

A. They are not included in those figures. There are separate schedules there, just the original summary or original schedules in there. They are not included in the '49 summary.

Q. So, they are not sufficient to do anything with?

A. At this time, they would have to be completed before they could——

Q. Yes.

A. In other words, we don't have enough information on that. The only thing we have complete information on here is on '49.

Q. Now, I have here Government's Exhibit 77, and I am having some difficulty with that, Mr. Frank. I have looked at some of the figures on columns of reading matter and I do not find the figures which you have in here agree [fol. 222] with either media records or with the records that we have in the office. What I would like to know is just how you got those columns of reading matter figures.

(Documents handed to the witness.)

A. I have a log here from which we obtained the source of this information.

Q. That is all right. I am trying to find out, so I can check it. That is what I really want to know.

A. The columns of reading matter were obtained from the Times-Picayune records appearing on Form 247, which was a daily recap made by month and included pages, news and gross press run for each paper. It was a book that was provided us by Mr.——

Q. And that contained columns of reading matter?

A. Yes, sir.

Q. All right. Now, I have another question that your log may help you on, too, there.

How did you get circulation figures? I find that there is a considerable discrepancy between those and the audit bureau circulation reports and I had understood you took those from your basic data for the audit bureau circulation.

A. That is correct. We obtained them from the audit bureau circulation report, which was made available to us by Mr. Lagarde.

Q. You don't really mean the audit bureau circulation reports? You mean the record which we keep?

A. The records we had there for the ABC.

[fol. 223] Q. Did you check yourself back with the ABC record and find the discrepancy between the two?

A. No. We didn't. We only took The Times-Picayune Publishing Company record.

Q. Well then, that is what ABC takes?

A. Yes, sir.

Q. What I am trying to find out is: Why you and ABC can't agree on what the totals is.

Mr. Flurry: We object to that, Your Honor. It hasn't been shown that the witness knows anything about what ABC shows.

Mr. Wilson: I agree with that, Mr. Flurry. In fact, I might go one step further.

The Court: Do you agree that the objection is good?

Mr. Wilson: No.

The Court: What is that that you agree with, then?

Mr. Wilson: Part of his statement, sir.

A. As our record will show here (indicating), we broke the circulation down into total-page circulation, spoils in printing, leftovers and spoils after printing, returns, service copies, unpaid copies, bulk sales, office use and office files and gross press run.

Q. And some of those are deducts? And some of them are additions, are they not?

A. Yes: I feel that an addition will show that these all add up to the total we have here: total-page circulation, spoils in printing, leftovers and spoils after printing, returns, service copies, unpaid copies, bulk sales, office use [fol. 224] and office files and gross press run.

Q. You get gross press run. All right. Now, I understand.

Now, I notice that you have got some figures in there on square inches of zinc.

Would you refer to your notes there and see where you found the square inches of zinc reported?

A. Square inches of Zinc used in engraving was obtained from Mr. J. Dastgue, purchasing agent. There were made available the sheets of zinc used each month from his store stock record.

The zinc used in distribution between the Times-Picayune and States was on an 80-percent-Picayune, 20-percent-States arbitrary basis. The allocation does not allow for waste in connection with engraving.

Q. Now, there is one other item on this exhibit that I would like you to explain and that is how you got your allocation on mats made.

A. The number of mats made and the makeover pages were obtained from the 1948, 1949 and '50 files, bearing the heading, "Makeover and Replates".

These forms also contained columns of mats and had sheets for each newspaper. In other words, it was a record of the paper.

Q. Well, Mr. Frank, are you clear that that was shown for each paper? Or was it shown how many were made on the day shift and how many were made on the night shift?

A. I don't recall that it was broken down into that distribution, as to day or night.

[fol. 225] Q. Well now, did you make any effort, whatever, to deal with the revenues of the paper?

A. No, sir.

Q. Now, as I understand it, you made no exploration into the revenue figures at all?

A. We made no study, whatsoever, of their records on that basis.

Q. In handling your total amount of newsprint, which is the other figure that you show there, did you give any credit against newsprint for the sale of waste paper?

A. I believe that was all taken into consideration in the spoilage and circulation.

Q. No. I am talking about the money that was made by selling waste paper.

A. We didn't consider the financial——

Q. In other words, I just want to be sure that you didn't offset your profit from waste paper against your expenditure for newsprint.

A. No, sir. We didn't delve into the financial structure at all of the paper.

Q. And in so far as the stereotype room and rotogravure room, you offset nothing for the sale of cuts, mats and metals against the expenditure?

A. We didn't take any financial data at all. We were confined to the hours, number of employees, and the hours broken down as to regular hours and premium your overtime hours. We didn't take the financial figures from [fol. 226] the records.

Q. Well, you got into the financial figures in the sense of how many dollars were spent for things in the way of newsprint, in the way of metals, and that sort of thing, didn't you?

A. We only took the quantity.

Q. You mean, you only took the amount of newsprint and didn't take the price?

A. If I may see that record again——

Q. I can tell you. You did take the price.

A. We took the cost-per-pound basis at which it was purchased; but in taking that, why, there were several different costs; so, we broke it down as to the cost in each.

Q. In other words, you showed so many thousand at one price and so many thousand at another price?

A. Yes.

Q. And the same is true on ink, isn't it?

A. Yes, sir.

Q. Mr. Frank, I asked you earlier whether Mr. Tims had told you at about the outset of your audit that the financial statements which had been set up by The Times-Picayune Publishing Company for a number of years had been set up in so far as they attempted to make any break between the papers on a purely arbitrary basis, such as you described when you said 80-20 on mats and zinc.

Now, weren't you told that in advance, that the whole thing had been set up on that basis for our own benefit and to keep our own records?

[fol. 227] A. I recall that when I contacted Mr. Phelps and we were walking over to the Times-Picayune.

Mr. Phelps stated that there was some distribution in their financial data that, at the time, he said might not be in accordance with sound accounting principles; but, other than that, I don't recall anything else being said.

Q. Now, just one or two more questions.

In connection with your work over there and while you were preparing these time sheets on these various studies—I take it these (indicating) are your work sheets, are they not?

A. Yes, sir.

Q. Did not Mr. Tims request that you furnish the company with a photostat of those sheets so that we might examine them in advance?

A. He made that request, yes, sir.

Q. And I believe you wrote to some office of the Department of Justice and reported back that they had refused to permit it? Is that right?

A. As I understood it at that time, Mr. Leonard, I believe, was here in town and he indicated that the attorneys for the defense would be given an opportunity to see those papers.

I don't know that there was any time specified as to when they would want to see them.

Q. But you did report to Mr. Tims that they had said you could not let us photostat the papers?
[fol. 228] A. Yes, sir.

The Court: Which papers were those?

Mr. Wilson: The work sheets that make up Exhibits 75, 76 and 77.

I wonder if you would mind if I had those notes marked in evidence so they would be available for me in case we need them.

Mr. Flurry: No objection, Your Honor.

Mr. Wilson: Would you mark those as Defendant's Exhibit 1 for identification.

(The document referred to was marked Defendant's Exhibit 1 for identification.)

Mr. Wilson: I am not going to offer them, because I merely want them to check these figures.

Do you have a photostating machine available, Mr. Frank, that you could use and give me a photostat instead of the original?

The Witness: Yes.

Mr. Wilson: You may do that, if you would rather keep your original. All I want it for is so we can check back to those various places you referred to.

If the Court please, I have no further questions at this time. I would like to reserve my objection until I can check these basic figures.

Mr. Flurry: No further examination, Your Honor.

The Court: You are excused.

[fol. 229] Mr. Flurry: The Government now calls Mr. Tims, as a defendant and an officer of the defendant corporation, on cross examination.

JOHN F. TIMS, JR., a defendant, called by the Government as a witness, being first sworn, was examined and testified as follows:

Cross-examination.

By Mr. Flurry:

Q. Mr. Tims, would you please state your full name and address for the record?

A. John F. Tims (T-i-m-s), Jr., 523 Hector Avenue, Metairie.

Q. With whom are you connected in business?

A. The Times-Picayune Publishing Company.

Q. What official position or positions, if any, do you hold with that corporation?

A. At the present time, First Vice President and General Manager.

Q. How long have you been a First Vice President?

A. I have a record that I gave when my deposition was taken. I can't recall exactly, but I have a memorandum in my pocket of my employment dates and the steps that I have taken during the forty years I have been there. I will be glad to refer to it if you will permit me to.

Q. You may refer to it to refresh your recollection.

A. I was elected First Vice President and Business [fol. 230] Manager at the directors meeting on March 8, 1948, and elected First Vice President and General Manager at the directors meeting on December 12, 1949.

Q. Now, had you been a vice president prior to '49?

A. Yes. I was elected Third Vice President and Business Manager at the directors meeting on December 11, 1939.

Q. Now, when did you become business manager?

A. I became business manager on January 15, 1923.

Q. What have been your duties as Business Manager?

A. Well, when I was elected in January 15th, 1923?

Q. Well, through the years.

A. Well, supervising the whole business end of the paper: circulation, advertising, production.

Q. In other words, you were what the name itself connotes, in ordinary English?

A. I don't know what you mean by that word "connotes." You will have to tell me what it means.

Q. You supervised the operations of the business, generally.

A. Yes.

Q. Now, how long have you been a Director of the corporation?

A. I think I was elected a Director on June 10th, 1946 (examining document); that is correct: June 10th, 1946.

Q. Are you a member of the Finance Committee?

A. I am now; yes, sir.

Q. Will you explain to the Court what the functions of the Finance Committee are?

[fol. 231] A. The Finance Committee is appointed by the President of the Board of four or five members, and himself as ex officio member. They discuss, at lunch each week, various matters that come up.

Q. Are they somewhat an advisory committee to the Business Manager, to act in the absence of the Board of Directors?

A. Well, frequently there are things taken up at the Finance Committee and acted upon without even mentioning it to the Board of Directors.

Q. How long have you been a member of that Committee?

A. I don't recall exactly. I overlooked making a memorandum of that date. But I think since I was elected a member of the Board. I think that would be in 1946.

Q. Who determines the operating policies of the company? I mean, on a broad general basis. I don't mean the detailed operations.

A. Mr. Leonard Nicholson.

Q. Do you remember conferring with Mr. Nicholson with reference to those policies?

A. I do.

Q. Do any others confer with Mr. Nicholson with reference to those policies?

A. Yes.

Q. Who are they?

A. I think Mr. Healey, Mr. Hyams, Mr. Fitzpatrick, Mr. Coleman, Mr. Walton, who is the Treasurer, Mr. Adams,

the Credit Manager. Well, nearly everybody will confer with him.

[fol. 232] Q. Are most of those gentlemen, or all of them that you named, members of the Board of Directors?

A. No, sir.

Q. Are they employees of the company?

A. Yes, sir. Some of them are members of the Board, that I mentioned, and some are not. Mr. Fitzpatrick, Mr. Hyams and Mr. Healey are members of the Board of Directors.

Q. Are they also employees of the company?

A. Yes. Mr. Fitzpatrick is Editor of New Orleans States and Mr. Healey is Managing Editor of the Times-Picayune.

Q. You say Mr. Fitzpatrick is head of the New Orleans States?

A. He is the Editor of the New Orleans States. That is his title.

Q. Well, is he in charge of the affairs other than the Editorial duties?

A. No.

Q. Is anyone at the New Orleans States particularly designated to direct the affairs of the States, other than yourself?

A. Mr. Nicholson, of course. Then Mr. Adams, the Credit Manager functions for both; the Audit Department functions for both.

Q. I mean an over-all manager of the States.

A. Mr. Nicholson.

Q. I am asking you, Mr. Tims, is there anyone under you and Mr.——

—Nicholson.

[fol. 233] Q. —Nicholson. Do you have two Nicholsons?

A. There is one at present. There were two at one time. One is living today; Mr. Leonard Nicholson. When I refer to Mr. Nicholson I am referring to Mr. Leonard Nicholson.

Q. That is what I thought. I am asking you if there is anyone at the States under you and Mr. Nicholson who devotes his time to the general management of the affairs of the States?

A. Well, they devote their time, a great many of them do, like Mr. Nicholson and I do, to both papers.

Q. I am not referring to department heads. We will come to that, Mr. Tims; but I am talking about an all-over manager.

A. As an officer? Mr. Hyams, Vice President: he devotes his time to the operation of both papers. He signs checks and handles the insurance and matters like that.

Q. He works in the performance of duties of both newspapers?

A. Yes.

Q. The Times-Picayune and the States?

A. He is the Second Vice President.

Q. What duties does Mr. L. K. Nicholson perform other than as a member of the Board of Directors?

A. He is the President of the corporation.

Q. And what does he do as the President of the corporation insofar as the business operations are concerned?

A. You would have to ask him that question himself. If you want me to answer it I will answer what I know he does, to the best of my ability.

[fol. 234] Q. Give us some idea.

A. He supervises the whole paper. He is the executive head of The Times-Picayune Publishing Company, publishing morning, evening and Sunday newspaper.

Q. In other words, he is the actual operating head and you are his immediate——

A. ——understudy.

Q. Understudy?

A. That is right.

Q. Now, what department heads do you have for the operations of the Times-Picayune?

A. What department heads? Well, we will start at the top floor: We have Mr. Burke, who is the Promotion Manager, who handles the promotion copy in the morning, evening and Sunday editions. Then I come next in line with Mr. Gough, who is my assistant, who handles morning, evening and Sunday. Mr. Hyams handles some financial matters, insurance and the like of that for both papers. The Audit Department is headed now by Mr. LaGarde, who was appointed about a month ago. Mr. Davidson was

the Auditor for forty years. He resigned. The Auditing Department works for both morning, evening, and Sunday editions.

We go on to the Advertising Department, which is grouped all on the sixth floor. Mr. Stephens, Classified Advertising Manager, morning, evening and Sunday editions, which has the classified solicitors under him, as well as the telephone girls who handle incoming telephone ads. The [fol. 235] Copy and Art Department are under Mrs. Fredericks, who handles copy and art for both papers. Then the Display Advertising Department is somewhat broken down. As a matter of fact, all the Display Advertising men handle advertising that will run morning, evening and Sunday.

Then on the fifth floor is the Mechanical Department; Mr. Baker is Superintendent of the Composing Room and Mr. Elrod is Superintendent of the Stereotype Department. Then we go down to the fourth floor where Mr. Nicholson's offices are. He is President of the corporation, as I have told you. Mr. George Healy is Managing Editor of the Times-Picayune, and Mr. Fitzpatrick is the Editor of the New Orleans States, and Mr. Frank Allen is the Managing Editor of the New Orleans States.

We go now to the third floor. That is the circulation department, and the Engraving Department. The Engraving Department,—there are so many of them I can't remember them all—I can't recall his name right now. He is Superintendent of the Engraving Department: that is for both morning, evening and Sunday.

Mr. Coleman is the Circulation Director of the morning, evening and Sunday paper.

Schriever is the man's name that is Superintendent in the Engraving Department: Warren Schriever.

On the second floor is the Mail Room, Personnel Department and the Purchasing Department. Mr. Dastugue is the Purchasing Agent. Mrs. Michelle is the Personnel Director. Mr. James King is the Mail Room Superin- [fol. 236] tendent.

On the next floor, which we will have to take the basement and the mezzanine, because in the press room, while your

reel room is in the basement, the upper part of your presses are on your mezzanine. Mr. Peter Prassanois is the Superintendent.

Q. Will you spell that name please?

A. P-r-a-s-s-a-n-σ-i-s. It is a Greek name.

And on the other side, now, we are just putting in another eight-unit press, is the Cashier's Department, the Want-ad counter, and the Credit Department. The cashier is Mr. Walton who is also Treasurer of the corporation; and Mr. Adams, who is Credit Manager.

That about covers it, to the best of my memory.

The Court: Your memory is good.

A. Thank you, Judge.

By Mr. Flurry:

Q. I don't know, in the long list, whether I am right about this or not, but I don't recall having heard you mention the Advertising Department.

A. I think I did overlook that. That is on the fifth floor, where Mr. Murray, who is the Advertising Director, Mr. Charlton, who is the Retail Advertising Manager of the Times-Picayune, morning, and Mr. Swayze, who is Retail Advertising Manager of the evening edition of the States, and Mr. Ladreyt, who is the General, or national, Advertising Manager of both newspapers, are located.

I believe I did mention that Mr. Stephens was the Classi- [fol. 237] fied Advertising Manager.

Q. Yes, I think you mentioned that.

Now, you have one manager for the classified, and one for the general.

A. Yes, sir.

Q. And in the retail you have two: one for the States and one for the Picayune?

A. That is correct.

Q. Is that due to the fact that you have the forced combination rate on classified and general so that when you solicit one paper you are soliciting for both?

A. It is a different type of selling. In classified advertising you sell it as a unit, as one handling. There is no use to have classified solicited to run both papers if you take it at one time.

Q. That is what I say: when you solicit for one you solicit for both.

A. For both; that is right.

Q. Does the Times-Picayune Publishing Company engage in any operations other than the publication of newspapers?

A. They own and operate Radio Station WTPS.

Q. Do you keep your operations of WTPS separate from the operations of the newspaper?

A. You mean in the Auditing Department?

Q. Yes.

A. We have a sheet showing what their operations are.

[fol. 238] Q. Of course, you consolidate those figures in your Annual Report.

A. We consolidate everything into what we call The Times-Picayune Publishing Company.

Q. I notice reference in some of your documents to the Electric Delivery System, Inc.

A. The Electric Delivery System, is owned entirely by The Times-Picayune Publishing Company.

Q. What does it do?

A. It hauls our papers in the city and in the country.

Q. How is the financial operations conducted between the Electric Delivery System, Inc., and the Times-Picayune Publishing Company?

A. They bill us each month and The Times-Picayune Publishing Company pays them each month.

Q. That is for delivery expenses?

A. Yes, sir.

Q. They perform that function for the papers?

A. Yes.

Q. Does that go into what you pay the Electric Company? Does that go into your expenses for delivering papers?

A. Yes; charged under the Circulation Department classification for "hauling".

Q. That corporation is still in existence, is it not?

A. It is.

[fol. 239] Q. In other words, Mr. Tims, the Electric Corporation performs about the same functions for the Times-Picayune as a delivery system would perform as a part of the newspaper itself?

A. Well, I might explain how we happen to own the

Electric Delivery System. A man by the name of Miller owned it. He let the business run down and it got in pretty bad shape and it was a question with us of carrying an independent contractor or buying his business out. We elected to buy it.

Q. Now, will you explain the basis upon which you pay the Electric Company and the basis upon which you take into account any profits from the operation of the Electric Company at the end of the year?

Mr. Wilson: Well, I object to the whole line of testimony. It is no issue in this case; it is the first time it has ever been heard of in this law suit. It is not in the pleadings and all the questions are highly irrelevant and immaterial and have no bearing on any issue in the law suit.

Mr. Flurry: May it please the Court, one of the issues in the case is 23(h). In order to determine what the operations in the States are it is necessary for the Government to know what all of the expense items that go into the operations of the newspapers are, and to take that into account. We are merely trying to get information from Mr. Tims to determine just how those operations are handled with reference to the expenses incurred by the newspapers in the operation of that corporation and whatever profits there may be at the end of the year from those operations, as to whether they come back into the corporation.

[fol. 240] The Court: This goes to the question generally of the allocation of costs between the——

Mr. Flurry: I beg your pardon.

The Court: Does this go to the question of whether the allocation of costs is proper?

Mr. Flurry: Yes, Your Honor.

The Court: I think on that basis it is admissible. I overrule the objection.

A. What is the question.

(The Reporter read the last question.)

A. The Electric Delivery Service bills the Publishing Company for hauling, broken down, so much for hauling the New Orleans States, so much for hauling the Times-Picayune. Those bills are handled by Mr. Coleman, who is Vice President and Circulation Director. Whether that is

with the rate per mile, per hour, I don't know. I never see them. As far as the profit that the Electric Delivery System makes, the financial statement which we will be glad to submit to you, if that is a proper thing to say, will reveal that. I don't know just what they make. They don't make an awful lot of money; I can tell you that.

Q. More or less it is on a cost basis, is it not?

A. It makes a profit. In our business, the Electric Delivery Service business, where naturally we are hauling papers as far as Lafayette, Louisiana, we go out loaded full and we come back empty. It sometimes occurs to me that it might be well for us to consider contracting for our papers; that it would cost us less money.

Q. Well, are those profits which come back to the Times-[fol. 241] Picayune Publishing Company at the end of the year? Are they allocated as to the two newspapers; that is, the Times-Picayune——

A. No, sir; there have been no profits coming back. The Electric Delivery Service Company has stood on its own feet.

Q. Have you ever had any loss during the operations of the Electric Delivery Service Company?

A. I don't recall; I would have to go back and look at the statement.

Q. Do you mean to say you can operate the Electric Delivery Company on a "break-even" basis, on an annual basis?

A. I am sure it has made money. I think the statements will reveal that. I can't tell from memory.

Q. What I want to know is what goes with the profits?

A. What do you mean, what goes with the profits?

Q. Yes.

Mr. Phelps: I think the issue, whether the Electric Delivery System has paid dividends or otherwise paid money to the Times-Picayune Publishing Company, if it has not, I think the issue in this law suit ends there. I object to any further questions along those lines.

Mr. Flurry: That is what I am trying to get clear.

A. It has paid nothing to the Times-Picayune Publishing Company.

Mr. Flurry: Oh, I misunderstood you; then. You mean that it has paid nothing to the Times-Picayune Publishing Company rather than it has not made any profits at the end of the year?

[fol. 242] A. That is correct.

Mr. Flurry: We wish, at this time, Your Honor, to identify a group of advertising contracts, and to offer them in order that they may be referred to and that they may be disposed of as we go along.

By Mr. Flurry:

Q. Mr. Tims, I show you Government Exhibit No. 80 and ask you to please state whether or not you can identify it and if so to identify it.

A. This is the Times-Picayune Local Classified Fixed Space Contract, effective February 1st, 1933.

(The document was marked "G-80" for identification.)

Q. I show you Government Exhibit 81 and ask you please to identify that.

A. It is The Times-Picayune New Orleans States Local Classified Gold Bond Contract, Effective March 15, 1935.

(The document was marked "G-81" for identification.)

Q. I show you Government Exhibit No. 82 and ask you to please identify that.

A. The Times-Picayune New Orleans States Local Classified Real Estate Contract, Effective March 15th, 1935.

(The document was marked "G-82" for identification.)

Q. I show you Government Exhibit 83 and ask you to [fol. 243] identify it.

A. The Times-Picayune New Orleans States Local Classified Fixed Space Contract, Effective March 15, 1935.

(The document was marked "G-83" for identification.)

Q. I show you Government Exhibit 84 and ask you to identify it.

A. The Times-Picayune New Orleans States Local Classified Real Estate Contract, Effective March 1st, 1950.

(The document was marked "G-84" for identification.)

Q. I hand you Government Exhibit 85. Please identify that.

A. New Orleans States Sunday Times-Picayune New Orleans States Over-the-River Classified Contract, Effective March 1st, 1950.

The Court: Would you mind going back to 84? What is it?

A. 84. The Times-Picayune-New Orleans States, Local Classified Real Estate Contract.

The Court: What is 85?

A. 85 is the New Orleans States-Sunday Times-Picayune New Orleans States, Over-the-River, Classified Contract, Effective March 1, 1950.

By Mr. Flurry:

Q. I show you Government Exhibit 86. Please identify that.

A. Times-Picayune-New Orleans States Local Classified [fol. 244] Fixed Space Contract, Effective March 1, 1950.

(The document was marked "G-86" for identification.)

Mr. Phelps: Excuse me a minute, please. May I see one of those originals? (Examines document.) If the Court please, I am directing Mr. Flurry's attention to the fact that the copies furnished to counsel for the defendants do not appear to have the reverse side of the exhibit. I assume Government counsel will furnish that to us in due course.

Mr. Flurry: I think we have those; I am not certain about that, Mr. Phelps.

Mr. Wilson: We are missing about four exhibits, too.

Mr. Flurry: These are cards which were furnished to us.

Mr. Phelps: The originals apparently are all right.

A. Mr. Flurry, I may tell you what happened. Some of those are photostated on the sides without the conditions on the other side. In other words, this contract has been photostated twice: the front and the back, and those have not.

Mr. Phelps: If Government counsel will furnish us with complete copies of the exhibits, that is all we require.

Mr. Flurry: I submit, Your Honor, that these contracts were furnished to us by The Times-Picayune Publishing Company and I don't know—as a matter of fact, I think they furnished us photostatic copies in the beginning, and if we don't have the back it is because only the front was [fol. 245] photostated at that time. We will be glad to search our files on it, but that is my recollection.

The Court: Let me say this: The copies I have seem—some at least—to have both sides. Do all these contracts have printing on the back?

Mr. Wilson: I think some of the Judge's copies are incomplete.

The Court: It may well be with respect to some of these contracts there is no printing on the back.

Mr. Leonard: Most of the Classified, Your Honor, I believe do have printing on the back.

A. No: 80 has not, according to this photostat. No. 81 has not; No. 82 has not; No. 83 has not; and starting with 84, it has.

The Court: That is right.

A. 85 has; so has 86.

The Court: Let's get on.

By Mr. Flurry:

Q. Will you identify Government 87, please?

A. 87: The Times-Picayune-New Orleans States, Local Classified Gold Bond Contract, Effective March 1, 1950.

(The document was marked "G-87" for identification.)

Q. Government 88.

A. Government 88: The Times-Picayune Publishing Company Publishers of The Times-Picayune—Mornings; New Orleans States—Afternoons and The Times-Picayune-[fol. 246] New Orleans States—Sundays, Retail Display Open Space Contract Rate Card, Effective March 1, 1937, with nothing on the reverse.

(The document was marked "G-88" for identification.)

The Court: Just a minute; I don't seem to have that. March 1? I have May 1.

A. May 1 is correct; I am sorry. May 1, 1937.

By Mr. Flurry:

Q. That refers to Government Exhibit 88?

A. Yes. 89 is The Times-Picayune Publishing Company, Publishers of The Times-Picayune—Mornings, New Orleans States—Afternoons, and The Times-Picayune New Orleans States—Sundays, Retail Display Contract Rate Card, Effective October 1st, 1941.

(The document was marked "G-89" for identification.)

Q. Government Exhibit 90.

A. The Times-Picayune Publishing Company, Publishers of The Times-Picayune—Mornings, New Orleans States—Afternoons and The Times-Picayune New Orleans States—Sundays, Retail Display Open Space Contract Rate Card, Effective January 1st, 1943.

(The document was marked "G-90" for identification.)

Q. Government 91.

A. The Times-Picayune Publishing Company, Publishers [fol. 247] of The Times-Picayune—Mornings, New Orleans States—Afternoons and The Times-Picayune New Orleans States—Sundays, Retail Display Open Space Contract Rate Card, Effective January 1st, 1949.

Q. Government 92.

A. The Times-Picayune Publishing Company, Publishers of The Times-Picayune—Mornings, New Orleans States—Afternoon and The Times-Picayune New Orleans States—Sundays, Retail Display Open Space Contract Rate Card, Effective March 1st, 1950.

(The document was marked "G-92" for identification.)

Mr. Flurry: We offer in evidence Government's Exhibits 80 to 92, inclusive, as just identified by Mr. Tims.

The Court: They will be admitted.

(The documents marked "G-80" through "G-92" inclusive were received in evidence.)

[fol. 248] Q. Mr. Tims, immediately prior to July, 1933, how many newspapers of general circulation were published in New Orleans?

A. The Daily States Publishing Company published the

New Orleans States, weekday, afternoon and Sunday; the Times-Picayune Publishing Company published the Times-Picayune, morning and Sundays; the Item—I am not sure about that corporate name—the Item Company, Ltd., published the Morning Tribune, the New Orleans Item, evening, and the Sunday's Item Tribune, on Sundays.

Q. Did the Times-Picayune Publishing Company purchase any of the properties and assets of the Daily States Publishing Company, Ltd., in about July 17, 1933?

A. They purchased the New Orleans States from the Daily States Publishing Company, its good will, Associated Press membership, feature contracts, and whatever advertising contracts they may have had.

Q. I show you defendant's exhibit 1 attached to the defendant's answer in this case, and ask you if you can identify that as a copy of the contract in question?

A. I have never seen this until Mr. Rashid, Mr. Keim and Mr. Leonard came in to see me and told me the list of exhibits they wanted, and one was a copy of where we applied for the sale to the States. They went over and got it out of the bank box, Mr. Nicholson and Mr. Hyams, and we made a photostatic copy and I don't think I have read it since. I haven't had time.

Q. You don't question the fact that this is a copy of the [fol. 249] contract?

A. No, I don't question or doubt that it is a copy of it, but I have not read it.

Mr. Flurry: May it please the Court, I should like to read a paragraph of this contract.

Mr. Phelps: May I suggest that it is not in evidence yet.

The Court: You don't intend to offer it?

Mr. Flurry: We will offer it, if necessary.

The Court: I don't think it is necessary.

(Mr. Flurry read part of contract, defendant's exhibit 1.)

Mr. Flurry: I think I might save time, your Honor, if instead of examining the witness, I read what was sold.

(Mr. Flurry read Exhibit "D-1".)

Mr. Flurry: Would your Honor like to have a copy of that in your folder?

The Court: I think it would be a good idea.

Court will recess, gentlemen, until twenty-five minutes to four.

(Short recess.)

The Court: Proceed.

Q. Mr. Tims, do you know what happened to the physical properties of the Daily States Publishing Company after these matters which were mentioned in this contract were purchased by the Times-Picayune Publishing Company?

[fol. 250] A. No, I do not. I can only tell you the part that I played in the purchasing of the New Orleans States by the Times-Picayune Publishing Company, if you wish me to do so, the part that I played and that I can testify to from my own knowledge.

Q. That will be all right, go ahead.

A. An attorney from Chattanooga, Tennessee, from the Southern Newspaper Publishers Association Convention, Mr. John Ewing, was on the train——

Q. Will you explain who Mr. John Ewing is?

A. Mr. John Ewing was the President of the Shreveport Times and also President of the Daily States Publishing Company. Mr. Nicholson was with me, Mr. Leonard Nicholson, and Mr. Ewing was accompanied by his wife and Mr. Rothenburg, who represented the Times-Picayune Publishing Company in New York, was also coming back to New Orleans. Mr. Ewing asked me if I would go out in the floating room with him, which I did, and he told me that some disposition would have to be made of the States and that the Item had offered him $700,000.00. They owed $320,000.00, $120,000.00 to the Canal Bank & Trust Company—whether it was in liquidation then or not, I don't recall—$160,000.00 I should have said, and $160,000.00 to the Commercial Bank & Trust Company of Shreveport. The Item Company, Ltd., whatever the corporate name was, Mr. Thompson and Mr. Neumeyer, who was the Associated Publisher, and General Manager, and Mr. Claude Rives of the Whitney Bank, had gone to Shreveport and

offered him $700,000.00 with $320,000.00 to be absorbed in [fol. 251] these loans, and the Item Company, Ltd., would issue $380,000.00 worth of Common Stock to the Daily States Publishing Company or to the Ewing interest that owned the Daily States Publishing Company. He asked me if we were interested, and I told him that I would discuss the matter with Mr. Leonard Nicholson, which I did the next day, but before leaving Mr. Ewing in the smoking compartment, he said he was going to his Gulf Coast home for the fourth of July weekend and he would be in his office the day after, which I think now was Wednesday, July fifth, at 11:00 o'clock, and if we had any proposal to offer him, why, he would be glad to receive it. I reported that to Mr. Nicholson, discussed it with Mr. York Nicholson, his brother, who was—or rather with Mr. Alvin Howard, who was First Vice-President, Mr. York Nicholson, who was Second Vice-President, and Mr. Esmond Phelps. Mr. Nicholson told me to go to see Mr. Ewing on the fifth of July and to offer him $525,000.00 cash, which I did, and he accepted it immediately. I said, "This is going pretty fast. I've never been in a deal this big. You had better let me go back and confirm this." So he said he was having lunch that day with Colonel John T. Sullivan at the St. Charles Hotel, and inasmuch as Mr. Nicholson and Mr. Phelps and Mr. Howard and I usually had lunch there, to come over and tell him if it was O. K. It took me only ten minutes to be in the States' office, which was located at St. Joseph and Magazine Streets, and I went over and told him it was O. K. There was some—then I passed out of the picture as far as the details were concerned except when the purchase was announced. Let's see, I believe I was in the States on the sixteenth of July, and we [fol. 252] published the first edition of our—then to be our evening paper—on Tuesday, July seventeenth, and before we issued the first street sale edition of the evening States, the New Orleans Item reduced their street sale price from three cents to one cent.

Q. That was on the daily copy that you reduced to one cent?

A. On the street sale price. We did not. The States did

not reduce its price. It remained on the street at three cents.

Q. Now, after you purchased the Daily States Publishing Company's assets as described in the contract, did you continue to publish a Sunday paper for the Daily States?

A. Well, we published the New Orleans States for the Daily States Publishing Company. We immediately established it by the Times-Picayune Publishing Company as the evening edition of the Times-Picayune Publishing Company, and the Sunday edition was merged with the Times-Picayune-New Orleans States, which it has been named from the first Sunday that we published it in 1933 until date.

Q. Did you continue to publish an afternoon newspaper in the same name as that used by the Daily States Publishing Company?

A. We published the New Orleans States as the afternoon edition of the Times-Picayune Publishing Company. I think that is correct. At one time the States was known as the Daily States. I don't know if it was after we purchased it or if it was before that it was called the New Orleans States. The reason why we did it, or they did it before we purchased it, was to identify it with the City.

Q. That is to identify it with what City?

[fol. 253] A. With the City of New Orleans, by having the New Orleans States instead of the Daily States, but if my memory is clear, it was the New Orleans States when we purchased it. I wouldn't want to make a direct statement of fact on that without checking it.

Q. Did you deliver that paper to the circulation which it had at the time you purchased it?

A. We continued to deliver it to the subscribers of the afternoon edition of the Times-Picayune Publishing Company when we took it over.

Q. Did you continue to run the same comics and other features which had theretofore appeared in the States?

A. Yes, we did.

Q. Did you run any of the comics and features which had theretofore been running in the Times-Picayune in the States?

A. I don't recall. We may have.

Q. Do you today run the same features and comics in the States as you do in the Picayune?

A. No, we do not.

Q. Did you have a separate news staff for the States after you purchased to that which you had for the Picayune?

A. When we purchased the States, we realized that we wanted to go in the evening field, and if we hadn't purchased the States, we would have started an evening newspaper of our own, or an evening edition of the Times-Picayune Publishing Company. We had a physical plant——

[fol. 254] Q. Well, you haven't answered my question.

A. Well, I am getting to answer your question, I believe. I am trying to. I am trying to be as factual as I can, Mr. Flurry. If you will give me the question direct, I will try to answer you direct.

Q. I think, Mr. Tims, the question only calls for a "yes" or "no" answer.

(Question read by reporter.)

A. Yes, we did. Naturally, you couldn't work the Times-Picayune morning edition to people twenty-four hours a day.

Q. Do you have a separate news staff today?

A. Yes.

Q. And you have had all during this time?

A. Yes.

Q. Who determines the news which will be entered in the news columns of the States?

A. They have a day Managing Editor, Mr. Frank Allen.

Q. And who determines the news which will enter the news columns of the Times-Picayune?

A. Mr. George Healy, Managing Editor of the morning edition.

Q. Is that also true as to your Editorial Staff, I mean in the limited sense? I believe the Editorial Staff takes care of the news also, do they not?

A. The Editorial Staff, as I know the Editorial Staff, takes care of the editorial page.

[fol. 255] Q. Now, do you have a separate editor for the two papers?

A. Yes. Mr. Leonard Nicholson is Editor of the Times-Picayune; Mr. William H. Fitzpatrick is Editor of the New Orleans States.

Q. Who determines what editorial will be carried in the States?

A. Mr. Fitzpatrick, after conference with Mr. Nicholson.

Q. And who determines it for the Times-Picayune?

A. Mr. Leonard Nicholson.

Q. Is he the active Editor now?

A. He is the Editor. Of course he has got associates. There are four associate editors on the Times-Picayune, and, of course, he has not been as active since the middle of January, 1950, when he had this first heart attack attending a Directors meeting of the Associated Press at Tuscon, Arizona. We have lightened the load quite a bit. At least, we have tried to lighten it on him.

Q. Has his associates done most of the selection of editorials, in seeing that they were prepared?

A. Yes, sir.

Q. Who determines what the editorial policy of the States will be?

A. Mr. Leonard Nicholson.

Q. Who determines what the editorial policy of the Times-Picayune will be?

A. Mr. Leonard Nicholson.

[fol. 256] Q. What do you call this blocked out space in the left hand corner at the top of the page?

A. The masthead.

Q. The masthead?

A. Yes, sir.

Q. Does your masthead of the States indicate that it adopts its own editorial policy?

A. It says it is an independent newspaper. So is the Times-Picayune.

Q. Mr. Tims, do you know of any statement ever published by the Times-Picayune or the States which held the Times-Picayune Publishing Company out to the public as publishing separate editions of one paper instead of two newspapers?

A. Repeat the question to me, please.

(Question read by reporter.)

A. I am sure there have been some statements to that effect.

Q. Do you recall what the nature of them was?

A. No, I do not.

Q. Do you recall whether or not they appeared in the newspapers?

A. I presume they would or they did.

Q. Was that prior to the beginning of this suit?

A. No, I wouldn't say so.

Q. Have you made such statements following the filing of this suit?

[fol. 257] A. That they are separate newspapers?

[fol. 258] Q. I am talking about statements that were announced to the public, Mr. Tims. That was my question.

A. Who announced them?

Q. Announced by the States or the Times-Picayune.

A. Unless you show me something, I just can't tell from memory that they did.

Q. You don't recall any statement that has ever been made to the public in which the Times-Picayune or the States held itself out as being a separate edition of the same newspaper?

A. Well, we have to file with the Post Office Department for the twelve months, ending each September, the Post Office report showing the ownership, management, circulation, those holding one per cent or more of the stocks, bonds and mortgages under an Act of Congress of 1908. We will show in that statement the week day morning Times-Picayune for the twelve months ending September 30, 1950. We will file it.

They will have another one in the States which will be separate, the evening States published week days in the afternoon for the twelve months, ending September 30, 1950.

We will have one in the Sunday edition, Times-Picayune-New Orleans States for the twelve months ending September 30, 1950.

If that is the statement you have, we do make those statements.

Q. Those statements are made separately for each of those papers, are they not?

[fol. 259] A. That is correct.

Q. There is no reference in any of those statements to the statement made as to the other paper, is there?

A. There is a reference to it, as to the publisher being the Times-Picayune Publishing Company in all three statements.

Q. And that is the only reference that connects them, is it not?

A. I could refer to the Post Office Government reports, but it is asking me quite a bit to remember all of the details in those Post Office Government reports. The publisher is shown as a publisher of the morning Times-Picayune Publishing Company, the evening Times-Picayune Publishing Company, the Sunday Times-Picayune-New Orleans States, The Times-Picayune Publishing Company, then it lists the Editor, the Managing Editor and the Business Manager.

Q. How did you show your operating revenues and expenses with respect to the operations of the States and the Times-Picayune beginning immediately after the purchase of the newspaper?

A. I never set that policy. I was Treasurer of the paper, but not a member of its board, of the board at that time. It was established on an arbitrary basis. I was attempting——

Q. I mean——

A. I beg pardon.

Q. I am referring to the fact of whether or not you filed them separately, as to the States and the Times-Picayune.

A. The statements?

[fol. 260] Q. Yes.

A. I have some charts, incidentally, that if you want to see them, I would be glad to show them to you. They will present to the Court just how it functions, how it functioned then and how it functions now. I could make it a little clearer with them.

Mr. Flurry: May I inquire if the Clerk has the exhibits which were attached to the taking of depositions.

The Clerk: They should be with them.

By Mr. Flurry:

Q. I show you, Mr. Tims, copies of the report of examination for the years 1947, 1948 and 1949, prepared by Haskins & Sells, which was furnished to the Government by The Times-Picayune Publishing Company and ask you to examine those documents and state how the accounts are separated according to the newspaper.

(Document handed to the witness.)

A. It speaks for itself. The Times-Picayune Publishing Company balance sheet, December, 1946, compares in showing the assets and liabilities. I am not a Tax Accountant.

Look at the first one, too. The first sheet shows The Times-Picayune Publishing Company summary of net income and undivided profits for the years ending December 31, 1946, showing operating revenues, operating expenses, and so on down the line.

Q. That is your consolidated report of the total company operation?

A. That is for the morning, the evening, the Sunday, [fol. 261] Radio Station WTPS and everything.

Q. Now, according to your statement of profits from operations, I will show you this and ask how that is set up.

(Document handed to the witness.)

A. Well, this is set up showing The Times-Picayune Publishing Company's statement of profits from operations before general and administrative expenses for the years ending December 31, 1947, and 1946 comparison. It shows the total retail earnings; then, it shows the Times-Picayune separately. It shows the New Orleans States separately too. It shows Radio Station WTPS, and it shows the total and it shows opposite——

Q. Where are the profits of the Sunday paper included in it?

A. They are in the Sunday; rather in the Times-Picayune.

Q. In other words, in that report you have treated the profits of the States as a separate unit from the profits of the Times-Picayune morning and Sunday?

A. I haven't treated it that way. Haskins & Sells has treated it that way.

Q. When I referred to "you", I refer to the Company.

A. All right.

Q. Is that right?

A. I understand.

Mr. Wilson: Haskins & Sells.

By Mr. Flurry:

Q. You refer to Haskins & Sells?

[fol. 262] A. That is right.

Q. They are your auditors, are they not?

A. I presume this Haskins & Sells report is based on our statements which they take. These figures that are in here are from our statements, yes.

Q. Mr. Tims, do you recall when newsprint was made subject to the War Production Board regulations?

A. No, sir, I don't remember the year, but it was after Pearl Harbor. I know it was after December 7, 1941. The exact year, I don't know. It might have been in 1942. It might have been in 1943. In all likelihood, it was sometime in 1942. I can't recall.

Q. Did the regulations of the Board affect the amount of newsprint which The Times-Picayune Publishing Company could use?

A. It affected what every publishing company could use.

Q. Was there a limitation on that use?

A. As I recall it, the limitation was based in 1942 that you could use what you consumed in 1941, if I am correct.

Q. In other words, it was on a quota basis, was it not?

A. Yes, sir.

Q. Now,—the quotas which The Times-Picayune Publishing Company could use under the War Production Board regulation apply to the newspapers of the company, as a whole? Or, did it apply to each newspaper, separately?

A. As I recall it, I don't recall the exact language of the order of the War Production Board, but we set out to set the Sunday and the morning and the [fol. 263] evening separately.

Q. Now——

A. In other words, if the States used 1,200 tons in a

month, whatever that basis was, if the cut was five per cent or seven and one-half per cent—and I don't recall it—it was off that. It was off the Sunday; it was off the morning.

I don't want to be ahead of myself, see, and I don't mean to be, but what occurred: the Sunday Item discontinued.

Q. You will have an opportunity to testify on that.

A. I am a little ahead of you. I am sorry.

Q. Was the newsprint of the Sunday edition under the War Production Board regulations? And was your quota combined with the morning or evening newspaper?

A. I don't recall; but, if my memory serves me right, we broke it down, morning, evening and Sunday. That is correct to the best of my recollection. I may be in error on that, however.

Q. To refresh your recollection, isn't it a fact that you had a quota for the morning and Sunday and a separate quota for the States evening?

A. It may have been that way, Mr. Flurry.

Q. Now, who fixed those quotas?

A. The War Production Board.

Q. And were you required to make reports?

A. We were.

Q. Did you report upon the amount of newsprint used in [fol. 264] 1941 or whatever the first year was?

A. I am sure we did.

Q. According to the amount of newsprint used in the morning and Sunday edition as one unit? And the States as another?

A. Whatever the order required us to do, we did. I can't recall just what the order was; but whatever the Government told us to do, why, we did.

Q. Well, they didn't determine for you which newspaper you would chose to get a quota for, did they?

A. If I understand your question before, I don't recall if the War Production Board, in setting up this cut, set it up on a total consumption or if it was on a morning and an evening and a Sunday period. If my memory serves me right, and I may be wrong, it is that we set it up, as I said before, on morning, evening and Sunday.

Q. Now, did the controls of the War Production Board

have the same effect upon the newsprint supply of the Item as it had upon the Times-Picayune and States?

A. It did, and of other newspapers in the country.

Q. You mentioned a moment ago about the closing of the Sunday Item.

What effect did that have upon the supply of newsprint to the Item?

A. In 1942?

Q. Yes.

A. It started off by permitting the Item to use all that [fol. 265] tonnage in their week day allotment.

I thought that wasn't fair, that the Sunday Times-Picayune-New Orleans States was the surviving paper in the field. In other cities, particularly in Minneapolis, in Lincoln, Nebraska, and in Peoria—and I am sure in others, the surviving Sunday paper was given the suspended paper's tonnage to take care of the additional readers that they would have to do.

Q. What effect did that have upon the relative position in New Orleans with the States and the Item?

A. By the Item having——

Mr. Wilson: May I have that question again? I don't understand it.

(The reporter read the last question.)

Mr. Wilson: What is "that"? What effect did what have?

Mr. Flurry: The additional newsprint which the Item got by virtue of the fact that it had discontinued a Sunday and had the total newsprint for only the evening.

A. It is obvious.

By Mr. Flurry:

Q. Well, will you state what effect it had?

A. They had more paper to use six days a week.

Q. Did that affect the relative position of the two newspapers with respect to the advertising?

A. Naturally, it did.

[fol. 266] Q. Were they able to obtain much more advertising than the States, due to the fact that they had more newsprint?

A. Well, they obtained more circulation, too, because we had everything frozen then.

Q. In other words, they were able to carry more news and letters, more advertising, which brought more circulation? Isn't that true?

A. I think that is a correct statement.

Q. Now, did you take any action to bring about any change in that situation?

A. I did.

Q. What was the action which you took?

A. I went to Washington to appear before the Appeals Board headed by Dr. Holcombe of Harvard.

He listened to me very attentively and told me to go back and prepare an audit, where it would show what the increased population was and how much more water was being consumed in the sewers and the like of that, which I tried to do through the Sewerage & Water Board, and I got so baffled by it, I never knew where I was. As a result, I gave up that way of thinking and went back again and made my plea that we were the surviving Sunday paper and we should be given that tonnage.

The Newsprint Advisory Committee had Mr. Ralph Nicholson come to Washington and he came to the Statler Hotel where I was.

He said that he didn't understand this procedure.

[fol. 267] I told him I didn't either, but we were having to manage for the Sunday paper and that we couldn't fulfill our needs and that I felt that we should get some more tonnage like they did in Minneapolis and Tulsa and Peoria.

We went down to the War Production Appeals Board headed by Dr. Holcombe, together, and we both told our stories.

Dr. Holcombe said he couldn't take that paper away from him, that only Mr. Krug could.

He said that the only thing he could do was give me additional paper from the stock pile.

Dr. Holcombe made the suggestion: why not split that tonnage.

Me, being a fair-minded man, I thought: a half loaf is better than none.

He said that he wanted to sleep on it over that night. He did.

The next morning we went down there, and he accepted it.

Q. Do you recall, Mr. Tims, that the question came up in that hearing before the War Production Board on your appeal as to why you were unable to use any paper from the Times-Picayune morning and Sunday in the evening States?

A. I don't remember it, but it would be only natural that if the Sunday Item suspended, there was more demand for our Sunday newspaper, and that I couldn't very well take it away from the Sunday paper where I had to [fol. 268] service those formally serviced by the Item Tribune.

Q. Who else appeared before the War Production Board, other than yourself, on that meeting?

A. Mr. Ralph Nicholson, who was owner of the Item.

Q. Mr. L. K. Nicholson was not there?

A. He was not present.

Q. Did you personally present your case and make the statement to the War Production Board?

A. I did.

Q. I read you this statement, Mr. Tims, and ask you if you made this statement to the War Production Board.

Mr. Wilson: Just a moment. I object to that question. If there is a direct question to ask the witness, let the counsel ask him the question. It is not important what statement he made to the War Production Board.

If he proposes to contradict the witness, then I object on the ground that he has not shown the statement to the witness, first, and, therefore, he is not entitled to contradict him.

By Mr. Flurry:

Q. I show you, Mr. Tims, this statement and ask you to read this statement, beginning at the bottom of page eight, which begins——

The Court: Have you seen this?

Mr. Wilson: I have not seen it. I was just handed a [fol. 269] copy of this just now; and, if there is any question to be asked the witness on the matter of fact, let's have the question first.

I objected to examining the witness by handing him some testimony he had before and asked him to read that.

The Court: I think that presupposes that he is going to answer it improperly or in a different manner than he answered it before the Board.

Has he been asked the question? And has he answered that question at all?

Mr. Flurry: Your Honor, he has already answered the question contradictory to his——

Mr. Wilson: Then, under Rule 43(b) you have no right to contradict him with this, because you didn't show him this first.

The Court: What is the question?

By Mr. Flurry:

Q. Mr. Tims, did you state to the War Production Board that you were one of the few newspapers in the country who had to separate your tonnage, morning and Sunday, together, and weekdays, because when we bought the New Orleans States in 1933 we elected to keep it as a separate newspaper and we filed with the Audit Bureau of Circulation a separate statement showing the circulation of the New Orleans States, only, on that and, therefore, we cannot take any of the tonnage that is allotted to us in the Sunday by using it in our afternoon paper?

A. Mr. Flurry, if that is a transcript of my testimony [fol. 270] before the War Production Board, you are asking me a lot to go back and remember all I have been trying to remember for the past ten or eleven years.

The facts speak for themselves, that since we purchased the New Orleans States, we have shown the New Orleans States on a separate statement to the Audit Bureau of Circulation in its publishers' statement.

Q. Did you elect in 1933 when you bought the States to keep it as a separate newspaper?

Mr. Phelps: May it please the Court. I would like to object to this entire line of questioning, on the grounds that

what the War Production Board did with respect to the allocation of newsprint of dividing up between morning, evening and Sunday, is wholly irrelevant in so far as this lawsuit is concerned.

The Court: I don't understand that to be the situation here. What you are in effect being asked is whether the testimony he gave then was correct or is the testimony he is now giving correct.

He is giving him an opportunity to reconcile it if he can.

Mr. Phelps: My point is that the substance of the testimony, itself, irrespective of any contradiction, is wholly irrelevant.

Mr. Wilson: If the Court please, I suggest that under the Rule counsel is required to show him the testimony, first, rather than to ask him the question and then try to contradict him, if I correctly understand Rule 43(b).

[fol. 271] The Court: If he is given testimony which counsel believes is contrary and conflicts with testimony he gave on a previous occasion and asks this witness: Did you not on a previous occasion testify thus-and-so, now, he can say whether he did or did not and he has a right to reconcile any apparent conflict.

I think that is the situation.

Mr. Wilson: As I understand the rule, that provision was written in and the Supreme Court struck it out of the Rule. It pertained to the old rule that you had to first show the witness the statement and then see whether he disagreed with it, rather than to go the other way around and try to trap him by asking him something and then coming up with a contradictory statement.

That is the way I understand the law.

The Court: I think we probably understand the law in the same way. I don't think what is being done here is what you appreciate is being done. I think that is the difference. I think we agree on the law; but this witness, as I understand it, has already been questioned along these lines.

It is now brought to his attention that on a previous occasion, namely, before the War Production Board, he gave certain testimony which counsel thinks is in conflict with the testimony that he has already given here.

Now, that simply is being brought to his attention, as I see it. I don't think there is any attempt to trap this witness.

Mr. Phelps: If the Court please, what isn't clear to [fol. 272] me is what the statement is that Mr. Flurry would like Mr. Tims to rectify.

I think Mr. Tims testified that in so far as how he allocated between morning, Sunday and evening, he wasn't entirely clear. He gave what his best recollection was. He said that it could easily be the other way

Now, it doesn't strike me that this is a fit opportunity to impeach the witness on the basis of a statement of that nature.

I don't know whether Mr. Flurry is reading from a certified copy of the transcript or what he is reading from.

Mr. Flurry: I am reading from a photographic copy; I mean, photostatic copy.

The Court: I will overrule the objection.

It isn't clear to the Court, either, yet what the counsel is after. I expect to be enlightened.

Mr. Flurry: I think Your Honor is correct in stating the proposition that the witness, of his own volition, just a moment ago testified that in 1933 they made it an evening edition of the morning paper, that they wanted an evening edition, and that is what they made the States.

Now, we think that the witness should be straightened out on that and we should determine which one of these statements *are* correct.

[fol. 273] Mr. Phelps: What has the ruling of the War Production Board got to do with what the witness intended, in so far as an evening edition is concerned?

The Court: It hasn't anything in the world to do with it, and that isn't what counsel is seeking to establish here.

This is simply testimony which was given at a hearing of the War Production Board. It might just as well have been given before half-dozen other boards or any one of a half-dozen other boards. It is just a statement made on a prior occasion which counsel thinks is in conflict with what the witness has said here today.

I don't think there is any difficulty about that. It is very simple.

Proceed.

By Mr. Flurry:

Q. Was it true that you were unable to use any of the Sunday or morning papers under the War Production Board quota for the evening publication, namely, the States?

A. I don't recall the order, Mr. Flurry. I have told you, to the best of my knowledge, that it may have been that we could and could not.

Q. Isn't it a fact that you were seeking more paper through the War Production Board for the States?

A. That is true.

Q. And isn't it a fact that that is what you got the paper for under the division that you spoke of?

[fol. 274] A. That is what Dr. Holcombe did, as I recall it.

Q. And isn't it a fact that you explained to the War Production Board why you could not shift paper from one publication to the other?

A. I don't recall that. I may have.

Q. Wasn't that the justification which was given for your petition?

A. I don't recall the petition. I reviewed to you, to the best of my recollection, that when the order was originally issued, it was my understanding that it would apply to a morning and to an evening and a Sunday paper. Therefore, if I recollect correctly, it was 5 percent. We would have to take 5 percent off the morning tonnage or 5 percent off the evening or 5 percent off the Sunday. I recollect that. I don't know if that is correct or not.

Now, we later learned that the Item was using their Sunday allotment or the tonnage that they consumed in their Sunday paper into their weekday issue.

We looked at it, as I remember, two ways: That, here we cut down our Sunday and, although we were the surviving paper, that if they didn't give us paper there, they ought to give it to us the other place. I don't remember every detail of it. It is impossible for me to do that.

Q. Do you recall making this statement to the War Production Board: "However, a great many people and, as a matter of fact, of our approximately 50,000 city subscribers

on our afternoon paper in New Orleans, about 50 percent subscribe to our evening paper and our Sunday paper, [fol. 275] although we are not permitted to take any of that Sunday tonnage and allocate it to help us in the six-day evening field; whereas, the Item has been permitted to take tonnage for seven months on Sunday of 1941 and add it to the 1944 daily base. I think that is the only situation in the United States where that condition exists."

Was that the plea you made to the Board?

A. I think it was. I am sure it was, if that is a transcript or a photostat of it.

Q. If that was true, you could not switch any of the quota from the morning and Sunday paper to the States?

A. I said: My understanding or my impression was that that is how the War Production Board made the allotment: so much, Sunday; so much, morning; and so much, evening.

Q. Was the Item's quota upon that basis?

A. That was my understanding that it was.

Q. Why was it that they were permitted to use Sunday print for the publication of the evening paper after the close of the Sunday and you were not?

A. That is what I went up there to find out about.

Q. Well, did you elect to keep the States as a separate newspaper when you bought the New Orleans Daily States?

A. That is what we proposed to do, yes, sir, by having it as an evening edition with a banner on it; call it whatever you want to. We have a banner on the morning edition. We have a banner on the Sunday edition. We have a banner on the evening edition, all owned by The [fol. 276] Times-Picayune Publishing Company.

Q. My question was this, Mr. Tims, and I repeat it: Did you elect to keep the States as a separate newspaper when you bought the New Orleans Daily States?

A. No. That was not my impression.

The Court: Let me understand your position.

Was it your understanding then that the War Production Board allotted paper for a morning paper and additional paper for an afternoon paper and another quota for a Sunday paper and it made no difference whether the morning

paper and the afternoon paper were identical or whether they were two separate newspapers, that you couldn't shift paper from a morning edition to an afternoon edition?

The Witness: That was my original understanding of the order.

The Court: And that, since the Item's paper was allot-ed also on the basis of a morning edition and an afternoon edition, that when the Sunday morning paper was abandoned that that paper should be allotted to another Sunday paper?

The Witness: That is correct. We originally learned—Mr. Coleman told me that a gentleman, as I recall it, from Miami told him: Do you know that the Item is using the Sunday tonnage, weekday? And he told me about it.

I went up to Washington to see about it. There was a man who was one of the men in the Newsprint Advisory Division. I can't recall his name. He has since died. I told him about it.

[fol. 277] He said, "That can't be so"; and he pulled out a book and said, "That is not so"; so, I went back home and paid no more attention to it.

The Court: Now, when you——

The Witness: I am not through, Your Honor.

That was happening a year ago and, from the records, I see that the increase was continuing.

I went back to Washington to make sure about it and a man by the name of Hanson said, "Yes. They have a right to do it."

One told me one thing and someone else tells me another thing.

The Court: But you got half of the Sunday Item's?

The Witness: That was, oh, about after two years.

The Court: What happened with the other half? Was it used by the Item in the afternoon edition?

The Witness: Yes, sir.

The Court: Where were you permitted to use the other half?

The Witness: In the afternoon.

The Court: So, it was transferred from the morning paper to the afternoon paper, all of it, eventually? Half of yours?

The Witness: That is what my recollection is.

Mr. Flurry: That was the Item's allocation, Your Honor, that was eventually transferred, but the Item had been using its whole allocation before that.

[fol. 278] The Court: As I understand it, the Government's position is that he was permitted to take somebody else's loaf?

Mr. Wilson: So long as somebody gave it to him.

The Court: I understand.

Mr. Flurry: We are undertaking to show that, as a matter of fact, The Times-Picayune Publishing Company did make an election to treat the States as a separate and distinct newspaper and that is why the allocations were not transferable: because there were allocations or quotas for separate and distinct newspapers.

That is the statement which we say that Mr. Tims made before the Board and that we are trying to find out from Mr. Tims about.

The Court: The thought in my mind is this: If they could transfer half of it from the Item morning paper to the States, why couldn't it be transferred from the Picayune to the States?

Mr. Flurry: That was done, Your Honor, by the action of the Board, the War Production Board.

The Witness: By the appeals board.

Mr. Flurry: Yes, by the Appeals Board.

It couldn't be done voluntarily by the newspaper, without action of the Board, as I understand it.

A. You know, my memory is not so clear on it. I guess we still have some records over there. I don't know if it all got into one pot or not, then. It seemed to me that when I went back and talked to Hanson, he said, "You can use your paper however way you want."

As I say, it is very vague. I haven't given one thought to [fol. 279] what happened ten years ago as far as the War Production Board is concerned, except I do have a hazy recollection.

By Mr. Flurry:

Q. Did you get a copy of your statement before the War Production Board?

A. I may have, but I don't recall it.

The Court: What is the Government's position with respect to this transfer of paper? Let me be sure I understand it.

Mr. Flurry: Your Honor, we are not complaining about the transfer of the paper under the War Production Board.

The Court: I understand that.

Mr. Flurry: We are taking the position that before this lawsuit was filed that The Times-Picayune Publishing Company treated and considered the States as a separate newspaper from the Times-Picayune morning and Sunday.

We are contending that, contrary to what Mr. Tims has testified here, that he testified before the War Production Board before this case ever came up to the exact contrary.

The Court: I see the point, I think, that Mr. Phelps made. You say, they treated the newspapers as being separate and distinct.

Isn't it more accurate, perhaps, to say that the War Production Board treated these newspapers as being separate and distinct for the purpose of making these allocations and that that was the thought which this witness had in [fol. 280] mind at that time when he went back to the Board and said, "You have treated these papers as being separate and distinct and made separate and distinct allotments of paper for them. Now, we can't transfer them."

Mr. Flurry: I assume, Your Honor, according to the War Production Board regulations, that all of these quotas were fixed according to what the applicant for quotas filed and, evidently, they had filed their application for a quota for the morning and Sunday paper as one unit and the States as another and, after doing so, they were stuck with that proposition and they could not transfer without an order of the War Production Board.

That was the effect that Mr. Tims, we submit, had testified before the Board: that they had done that, because they had elected at the time they purchased the States to keep it as a separate newspaper and, therefore, it being a sepa-

rate newspaper, they filed their application for quota for newsprint for the States, as a separate unit from the Times-Picayune morning and Sunday.

We are going into this to show what the situation was as to the newspapers.

Mr. Wilson: May the Court please. There have been a number of statements made here to the effect that that is what transpired before the War Production Board. This is the first time these documents have ever been mentioned in this case. They were thrown out here today. There is no showing that that is an authentic transcript of anything. There is no evidence in this case that that is what transpired [fol. 281] before the War Production Board.

Mr. Tims has said that he cannot recall it. I think that puts an end to the matter.

Mr. Phelps: If the Court please, I think it goes even further than that.

Mr. Ralph Nicholson, who has testified, and Mr. Tims, who has also testified, have both indicated that the eventual allocation of this newsprint on the 50-50 basis to the States and the Item was, in effect, a compromise settlement, that the arbitrator said: "You men get together" and these men said they would split it up this way.

So, under those circumstances, it seems to me it would be wholly irrelevant and I move that the whole line of testimony be stricken from the record.

Mr. Flurry: We are not interested in the final settlement of the War Production Board question as to the quotas of the paper.

I recognize that what Mr. Phelps said is true, that there was an eventual compromise in the War Production deal of 50-50; but that isn't the question.

The Court: I understand the situation.

Mr. Kramer: As I understand the situation, Your Honor, the sole purpose of all this line of question has been to show before this lawsuit was filed the Defendants took a different position on a vital issue than the one they have taken after it was filed, and no other purpose.

[fol. 282] Mr. Wilson: May I suggest: There has been no testimony to that effect, except, in questions of Government

counsel, the witness has said that he doesn't remember anything different from what he said on the stand.

The Court: I understand the situation.

By Mr. Flurry:

Q. Mr. Tims, I ask you to read the last paragraph, beginning on p. 8 of this document and continuing through that paragraph at the top of p. 9.

(Document handed to the witness.)

A. "Mr. Tims" ***

The Court: Don't read it out loud.

Mr. Wilson: Read it to yourself.

A. (Continuing.) Do I get the whole substance of it by just reading this last paragraph?

By Mr. Flurry:

Q. Now, I ask: Does that refresh your recollection, Mr. Tims, as to what you told the War Production Board?

A. If that——

Mr. Wilson: Now, just answer the question, Mr. Tims.

A. Repeat the question.

By Mr. Flurry:

Q. I say: Does that refresh your recollection as to what you told the War Production Board?

A. Some part of it does. I see the reference in there to [fol. 283] Minneapolis and Tulsa and Peoria, but the other part does not.

Q. That is in the paragraph that you read that I didn't ask you to read. Just read the first paragraph that I asked you to read.

A. You told me to read the last paragraph on p. 8 and go over on the next page, did you not?

Q. To the end of the first paragraph on p. 9.

A. Maybe I read too much.

Q. Well, I will let you glance at it again and let you see which paragraph it is. It begins at the bottom of p. 8 and ends at the middle of p. 9, that paragraph.

Mr. Wilson: Maybe you ought to block it off, so we won't get confused.

Mr. Flurry: We are examining the witness, Mr. Wilson.

By Mr. Flurry:

Q. Does that refresh your recollection as to what you said to the War Production Board?

A. I am sure that we discussed some phase of that. If that is the exact language, I just can't recall, Mr. Flurry.

Q. That was a matter of very vital importance to you at that time, wasn't it?

A. Getting tonnage, yes.

Q. And you don't now recall what plea you made to the War Production Board to justify your asking for more paper in the States?

A. I think I told you the plea I thought that I made.

[fol. 284] Q. And you see no inconsistency in what you said your plea was and the fact that the Item could freely use paper which had been allotted for a Sunday publication to its evening publication?

A. That is correct. It had been——

Q. You say, you see no inconsistency between your position, as you stated it, and that applying to the Item?

A. Except that if we could have gotten it on Sunday, it would have helped to relieve the Sunday situation, where we had to cut down.

In one part of my statement that you let me read, I said that we ought to get it on account of being the surviving paper in the field, did I not?

Q. I will let you read anything in here, Mr. Tims,——

A. I will be glad to.

Q. ——that you think is necessary to refresh your recollection.

(Document handed to the witness.)

Q. (Continuing.) Do you remember when that was when that proposition came up?

A. No. I don't. I think I told you it was in '43 maybe, or '44. I don't know.

Q. That was when it first arose?

A. When it was finally settled.

Q. When did you finally settle it?

A. I don't recall. I went up there twice: First, when I was misinformed by the Newsprint Division of the War Production Board that it couldn't be done the way that I had been informed that it had been done. I looked at the [fol. 285] record and said, "It can't be done that way."

I went back the next time and the man that died who was on the Philadelphia Bulletin by the name of Hanson said, "Oh, yes. You can do it. You can use it any way you want."

Q. Will you look over the document and determine whether or not that refreshes your recollection as to what took place?

The Court: With respect to what?

Mr. Flurry: If it refreshes his recollection with respect to what he said to the War Production Board.

The Court: All right.

A. I do recollect here that I said, and I knew it before you were going to show me this, that I told the War Production Board that in Minneapolis, Peoria and Tulsa that the Sunday suspended paper's tonnage was given to the surviving Sunday paper. I remember that, yes. I don't remember all this that is in here.

By Mr. Flurry:

Q. Mr. Tims, can you recall a single written statement you or anyone else, to your knowledge, in your company, The Times-Picayune Publishing Company, ever made public prior to the Spring of 1950 to the effect that the States was an evening edition, rather than a separate newspaper?

A. Yes, sir; I have often made the statement that it was an evening edition.

Q. My question was "written," Mr. Tims.

A. I beg pardon?

[fol. 286] Q. My question was: a "written" statement.

A. I don't know. I would think, perhaps, there have been.

Q. Beg pardon?

A. I think, perhaps, there have been.

Q. Will you produce them?

A. I will see if I can. I don't know whether I can.

Q. Do you recall when those statements were made? The approximate time?

A. No. I do not.

Q. Do you recall how they were made? Were they in letters? Or in the form of statements in the press?

A. I say, I wouldn't know. I wouldn't know how to answer that.

Q. In fact, at the present time, you don't recall any?

A. That I have written, myself?

Q. Yes, or that anyone else, to your knowledge, connected with The Times-Picayune Publishing Company has written?

A. There are a lot of files over there. I will be glad to see if I have or not.

Q. I see. To your knowledge, do you now recall it?

A. Well, you will have to have something to show me, again, going back ten years or five years. I can't recall it right now. I may have and I may not. I don't know.

Q. Now, during World War II years, was there a shortage of newsprint?

A. In World War II?

[fol. 287] Q. Yes.

A. Yes. There was a shortage of newsprint, but it wouldn't do you any good, if you could get it or not. The Government told you how much you could use.

Q. I believe you stated, though, that the quotas assigned to the different newspapers were based upon the paper they had previously used?

A. Yes. They issued an order, maybe reducing it, one time, 5 percent and the next time, maybe 10 percent, and maybe 15 percent. I don't remember. There wasn't any shortage, but the Government wouldn't let you consume any more.

Q. Was that referred to? As historical use by the publisher?

A. It may have been. I don't know. I don't know what term they used.

Q. Now, after World War II was over and the War Pro-

duction Board quotas were off, was there any system of voluntary rationing of newsprint in the industry?

A. By the publishers, you mean?

Q. No, by the manufacturers of newsprint?

A. Well, it got to the point where they would only sell you so much. I don't know if that is voluntary rationing or not, Mr. Flurry. In other words, you were still restricted in your purchases of newsprint after the war by the mills.

Q. Was the amount of paper which you could buy after the war based upon the amount that you had previously used?

A. I don't recall. They had a full requirement contract and that was changed to a stipulated tonnage not to exceed [fol. 288] a certain amount. Then, we went out and bought where we could. We bought some Finnish papers, I remember. I don't know what year. Then, we bought some brown-market paper, if you wish to call it that.

Q. Could you buy paper unless you were an established customer of the mills?

A. By being someone new, do you mean?

Q. Yes.

A. I wouldn't think so, although I know in San Diego they did. There was a paper out there that was very friendly to certain interests and a little bitty fellow who went to Congress from there, a Scotsman, a red-headed fellow, didn't have any contract, but he got the paper.

[fol. 289] The Court: What is the purpose of this line of testimony?

Mr. Flurry: I think it will be obvious to you in our next question.

The Court: I made a remark previously which I think should be stricken from the record because I think it would be misleading. I made a statement with reference to the "half loaf." It was the Government's contention that they are getting paid for property which belonged to someone else. I learned later that that is not the Government's contention; so I just want to make the record clear that I understood the situation with reference to the obtaining of half of that extra quota that the Item had.

Now, this is something else, is it?

Mr. Flurry: Yes, this is something else.

The Court: I will just keep quiet until I know about it.

Mr. Flurry: I think I am fixing to clarify it right now, Your Honor.

By Mr. Flurry:

Q. Is it not true today that the supply of newsprint being manufactured for use in this country is less than the demand?

A. Do I understand the question that the supply of newsprint manufactured in this country—Are you including Canada?

Q. For sale in this country.

A. By whom?

Q. Regardless of where it is manufactured, that it reaches the markets in this country: the supply available in the United States.

[fol. 290] A. Well, it is very close, although for the first quarter I believe there was more paper produced than was consumed. I am not sure of that.

Q. Does the Times-Picayune Publishing Company contract in advance for its paper?

A. Do we make a contract in advance? Yes, sir.

Q. As a matter of fact, you now are operating under a ten-year contract, are you not, with the International Paper Company for newsprint?

A. That is one of our four suppliers.

Q. And when was that contract entered into?

A. This present contract? As I recall, I had no dealings with the contract that was signed in 1941, and I think—and that contract called for full requirements; and, naturally, when the Government issued these controls they weren't in any position to furnish as much as we wanted, if we wanted it or not, because our consumption would have been predicated on the previous year, and I do recall that in 1945 or '46 that Mr. Nicholson told me that the original contract had been amended to start with a specified tonnage for ten years, either from '45 or '46. Maybe it was '47. I think it expires either in '55 or '56.

Q. Let's get back to the point we are now interested in,

Mr. Tims. Could you buy newsprint today if you did not have contracts in advance?

A. In order to publish a newspaper, I would think it would be difficult to do.

[fol. 291] Q. I will ask you to refer to the transcript of your deposition that was taken some time ago in this case, to the paragraph appearing in the middle of page 68.

A. Yes.

Mr. Phelps: If the Court please, the Court raised a question as to what the shortage of newsprint had to do with this particular law suit. Counsel said that another question would make it apparent what the relevance of it was. I am afraid I am still in the dark. I would like counsel to explain to me what the relevancy of the shortage of newsprint is.

Mr. Flurry: May it please the Court, we have stated on several occasions, I believe,—I am quite certain that on at least one occasion heretofore, in pre-trial conference—I mean, we have mentioned it, that the Government contends that there is a monopoly in the morning field and there was a monopoly in the Sunday field until March 5, 1950, since July, 1941, in common parlance, use of the word "monopoly", but that we would undertake to show that it amounted to more than a mere common parlance monopoly in that it was extremely difficult for competition to arise just at this time. And this evidence is directed to that question.

Mr. Phelps: Do we understand the Government's position to be that a contemporary situation of this nature would be grounds for saying that no one could start a morning paper even if the Government is in position to show that such a situation exists?

Mr. Flurry: I would not agree with counsel for the [fol. 292] defendants, Your Honor, in his statement of contemporary shortage. In view of the appearance of evidence we think here that there had been a shortage since approximately 1941 or '42 up to the present time. Now, how long that shortage will exist, I don't know, and I don't assume that the Court would have any way of knowing.

Mr. Phelps: If the Court please, I have no desire to cut

counsel short. The Item did start a seven-day paper less than a year ago, so that I would think the Government's proof would be rather difficult, but if the Government wants to undertake that burden and the Court will let it in, I withdraw my objection.

The Court: Proceed.

By Mr. Flurry:

Q. Does this refresh your recollection, Mr. Tims? this deposition?

A. Yes, it does.

Q. Is this statement true, that you cannot buy a ton of newsprint if you are not under contract for it in 1951?

A. When was the deposition taken?

Q. January 17, 1951.

A. I had been in New York that previous October trying to get additional tonnage and I could not get additional tonnage at that time.

Q. Although you are an established customer and have been for many years of several of these mills?

A. (No response.)

Q. Now, prior to 1941, Mr. Tims, what had been the nor-
[fol. 293] mal period of time during which or for which The Times-Picayune Publishing Company purchased or contracted in advance for newsprint?

A. I had nothing to do with making newsprint contracts in those years.

Q. Well, didn't you testify on your deposition with respect to that?

A. I think I stated that prior to 1939 that the Times-Picayune had had a contract with the International Paper Company and I don't think I stated how long it was, because I don't know; and I am sure I couldn't.

That mill was bought by C. Erick Bohlwater, and through a sales agency formed by the name of Bohlwater Agency, and I think my deposition will show that it was headed by a man by the name of Miles.

Q. We agree with that, Mr. Tims, if I may interrupt you.

A. You have got something you are reading from, and you expect me to keep it all in my mind, and I am doing

my best to refresh my mind and tell it to you accurately, as best I can.

Q. I am asking the question, if you did not testify during the taking of your deposition as to the length of time for which the Times-Picayune Publishing Company normally contracted for paper in advance, prior to this 1941 contract.

A. I think it was one year; there may have been two years, and I wouldn't be surprised a bit if there were some five-year contracts, but I have not the knowledge of it, sir.

Q. Do you know of any other contract which the company entered into for a ten-year period?

[fol. 294] A. I know nothing of the contracts except going back and look at them, since this suit was started, except those that I made with the Finns & Coosa River, and Montmorency Paper Company. The previous contracts were handled by Mr. Nicholson. I have gone back and looked at them in the files and I think I testified to assist the Government to the best of my ability, but the way I happened to know it happened to be my own birthday. August 15, 1941 was the date on this first contract with the International Paper Company.

Is that what you want me to testify to?

Q. I think you answered my question a long time ago, Mr. Tims.

A. All right.

Q. Now, do you file annual statements with the Audit Bureau of Circulation with respect to your newspaper?

A. Yes, we do.

Q. Who determines what goes into those statements to the Audit Bureau of Circulation?

A. I think that question can best be answered by Mr. Coleman who is Vice President and Circulation Director. He handles all the circulation phase of it, as well as the reports. He signs them and I sign them too, but I leave it entirely to him as to the accuracy of it.

Q. You sign them as your statement, do you not?

A. Co-sign with Mr. Coleman.

[fol. 295] Q. Since this probably will appear in other places in the trial, will you explain to the Court what the Audit Bureau of Circulation is?

A. The best explanation I can give you, the Audit Bureau

of Circulation was formed, I believe, in 1917, for the protection of buyers of advertising. It was felt prior to that time that the statement I told you about earlier, the Post Office Government Report, where the circulation has to be shown, would be sufficient for advertisers to buy advertising space. The Government was not interested in auditing newspaper circulations. They wanted to know who owned and controlled newspapers and the national advertiser——

Q. May I interrupt you. Were they also interested in knowing what newspapers you published and what kind of papers they were as to whether or not they were editions or separate newspapers?

A. When it was formed, Mr. Flurry?

Q. What is that?

A. Did you ask me when it was formed?

Q. I said, was it interested in that information?

A. I wouldn't know. I think the chief information they were interested in was in getting something to protect the buyers of advertising space and when somebody said they had 200,000 circulation that they would have 200,000 circulation and not 120,000. I think that was the primary purpose.

Q. Is their publication a reference work for advertisers?

A. The advertiser refers to it. It is sort of a bible in buy-
[fol. 296] ing newspaper space.

Q. And it has somewhat the same effect with the newspapers too, does it not? The publishers, they consider it somewhat of a Bible too, on circulation?

A. I think it is helpful to be a member of the Audit Bureau of Circulation, although I have known some very influential newspapers who were not members of it, like the Times-Herald, and the Columbus Dispatch.

Q. Mr. Tims, I show you Government Exhibit 93, and Government Exhibit 94 and ask you to please identify those.

A. Government Exhibit 93 is a publisher's statement of the New Orleans Parish, Louisiana, Times-Picayune, morning Times-Picayune, States Sunday Section, months ending September 30, 1950, which gives your circulation, your printed time and also shows what the evening and Sunday paper cost. 94 shows the publisher's statement of the New Orleans, Orleans Parish, Louisiana, States, evening, which

shows the five day average net page circulation and Saturday only, as well as distribution, time, showing what the evening price is, evening only, and evening and Sunday.

Q. Did you sign those statements?

A. I don't recall. I may have.

Q. In 1950?

A. I may have, I don't recall. Look on the other side and that will show you who signed it.

Q. All right, your name is printed on the other side. It [fol. 297] is a printed copy, of course?

A. I guess I signed it then.

Mr. Flurry: We offer in evidence Government Exhibits 93 and 94.

The Court: 93 is the Times-Picayune morning and Sunday, and 94 is the States evening?

Mr. Flurry: Yes, your Honor.

The Court: They are admitted.

(The documents marked "G-93" and "G-94" for identification, were received in evidence.)

The Court: We stand at recess, Gentlemen, until tomorrow morning at 10:00 o'clock.

[fol. 298] PROCEEDINGS OF MAY 2, 1951

The Court: Proceed.

John F. Tims, Jr., resumed the witness stand, and testified as follows:

Cross-examination.

By Mr. Flurry:

Q. Mr. Tims, how long has the Times-Picayune had the largest circulation of any single newspaper published in New Orleans?

A. Well, I could not tell you accurately. At least twenty years.

Q. How long has it been the largest newspaper published in New Orleans in pages printed?

A. I would have to refer to the record to give it to you accurately.

Q. Well, your best recollection?

A. I would say twenty years or more, maybe.

Q. How long has the Times-Picayune been the largest newspaper in New Orleans in advertising lineage?

A. Probably twenty years.

Q. Who determines what the advertising rates will be for the Times-Picayune and States, Mr. Tims?

A. I confer with various people and come to a conclusion and go up and discuss it with Mr. Leonard Nicholson, who either approves or rejects what my recommendations may be.

Q. As a normal course of business, how are rate charges [fol. 299] brought up in the organization?

A. Well, it depends upon what you can see of the future, increased labor costs, what the news print cost is going to be.

Q. I mean just the routine of how they are brought up for consideration. Who proposes them?

A. I look into it and see if we are going to have sufficient revenue to operate and to give a profit to the six hundred odd stockholders in the Times-Picayune Company.

Q. Do most of the changes arise at your suggestion, or at the suggestion of the manager of a particular advertising department?

A. Chiefly at my suggestion after conferring with Mr. Nicholson.

Q. Now, what factors do you consider in determining whether a rate change will be made?

A. It depends upon what rate we are thinking about, if it is a retail rate or a general rate or a classified rate. There are a number of factors to be considered.

Q. Well, I am speaking generally now. Will you demonstrate just what the factors are as to each one of the classifications, that is, classified, general and local display.

A. Well, we review the picture; if we feel that we are going to need certain increased operating revenue, if we are going to increase the classified rates or the general rates or the retail rates or the circulation. The whole picture is taken into consideration.

Q. Well, could you be a little more specific as to the defi-
[fol. 300] nite factors which you consider?

A. Well, as an illustration, if it looks like our cost is going to increase a million dollars, where are we going to get the million dollars. We have got so much circulation. Should we put an increase in the price and let the reader pay some part of this cost, the advertiser pay some part of this cost, and it is determined that way.

Q. Are increases of costs the only factors which you consider in rate increases?

A. Well, circulation at times is taken into consideration.

Q. Do you recall a question of rate in the States that arose about 1938 with respect to furniture advertisements?

A. I have a recollection of it.

Q. Was that recommendation made to you by Mr. Nelson Swayze?

A. I received several memoranda. I think one from Mr. Swayze, one from Mr. Blackburn, now deceased, and one from Mr. Murray.

Q. Did you discuss that rate change with Mr. Nicholson?

A. Yes, I did.

Q. Do you recall a meeting held by you and Mr. Nicholson and Mr. Blackburn and Mr. Murray and Mr. Swayze with reference to that?

A. I refreshed my memory after I saw the photostat that you took out of the office.

Q. And that was a meeting at which Mr. Nicholson approved the rates after the discussion was——

A. Not a furniture rate. What he approved with the re-
[fol. 301] duction of one cent a line on any advertising that was picked up from one paper to the other. It wasn't confined to furniture advertising. It was confined to amusement, department stores, as the case may be, because the Item Company also had in their contract at that time, or had for a great many years, going back to my knowledge in 1935, where property was picked up from one edition to another was allowed one cent off on account of the saving in composition, the setting of the ads, and the making of cuts; an economic saving.

Q. What did Mr. Murray tell you was his reason for recommending that change?

A. I don't recall. It is in our memoranda that we would be able to get some additional furniture advertising.

Q. Would you say that those memoranda set forth the true reason for making that change?

A. I think you would have to ask them that question, what they meant by it.

Q. Well, you received the memorandum?

A. We received the memorandum which touched on furniture lineage. My overall thinking was that there should be no discrimination, that this was the sound thing to do from the standpoint of economics.

Q. You made the rate change, did you not?

A. We made a rate change, yes, sir.

Q. Did you make it for the purposes which Mr. Murray had proposed in his memorandum?

A. No, we made it chiefly to help get additional volume [fol. 302] either from the States for the Picayune or from the Times-Picayune for the States, for which there was justification. The fact that if we picked it up, why, you didn't have to reset the whole copy or remake the cuts.

Q. I show you two documents, Mr. Tims, one marked Government Exhibit 96 and one marked Government Exhibit 97. Will you please identify those documents?

A. 96 is a memorandum, office memorandum, dated April 5, 1938, addressed to me as Treasurer and Business Manager, from Mr. L. F. Blackburn, Assistant Business Manager. Do you wish me to read it?

Q. No just identify the other one also.

A. The other is an office memorandum dated April 4, 1938, addressed to me as Treasurer and Business Manager, from Nelson R. Swayze, States Advertising.

Q. The last one that you identified was 97, was it not?

A. 97.

The Court: Where is 95?

Mr. Flurry: We have it, your Honor, we haven't offered it.

Mr. Phelps: If the Court please, just for the record, I un-

derstood 96 to be identified as being dated April fifth. My copy indicates April the sixth.

Mr. Flurry: April the sixth is correct.

We offer in evidence Government Exhibits 96 and 97.

The Court: They will be admitted.

[fol. 303] (The documents marked "G-96" and "G-97" for identification were received in evidence.)

(Mr. Flurry read Government Exhibits 96 and 97.)

[fol. 304] By Mr. Flurry:

Q. Now, Mr. Tims, did you write memoranda to the advertising staff of the States and another to the advertising staff of the Times-Picayune announcing the approval of that rate?

A. I did. I don't know that it was addressed to the advertising staff of the States and the advertising staff of the Times-Picayune. I think I addressed it to individuals. You have it there.

Q. What result did the rate change have with respect to the furniture advertising carried by the States?

A. Very little. The figures would reveal it. We are glad to submit the figures of the furniture classification from that time on. I can't remember. My recollection is that it had very little help.

Q. Do you know whether or not it resulted in a decrease in the lineage in the furniture classification by the Item?

A. I don't recall.

Q. Was the procedure in which this instance arose different from the normal procedure, or does that represent, in a way, the normal procedure?

A. Well, for some time we had been considering doing what The Item Company, Ltd. had been doing for a good number of years: where an advertiser picked up from one of their editions to another to give them a discount of one cent a line on account of the economic saving of not having to set the type and make the cuts.

Q. Did that represent the saving which you figured resulted from carrying the same ad in the afternoon paper that appeared in the morning paper?

[fol. 305] A. Well, at that time, of course, paper was less.

I don't know what the weight scales were—it's a good many years ago, in 1938—but it was a question of policy.

Q. I don't think you have answered the question, Mr. Tims.

A. Will you repeat it, please?

Mr. Flurry: Will you read the question, please?

(The Reporter read the last question.)

A. I couldn't say accurately. I would think it would be, though. I think it would cost, about that time, $24.00 to set a page and produce the cuts for it.

Q. Now, would that same saving per line result with respect to other classifications of advertising in carrying the same ad in the afternoon paper as you carried in the morning paper?

A. Yes.

Mr. Phelps: If the Court please, I think it ought to be clear what period of time the question is directed to: Whether that has reference to the year 1938 or has reference to the present time.

By Mr. Flurry:

Q. What did you mean, Mr. Tims?

A. I meant from 1938, if that is the date of my memorandum, until the time that we discontinued it, which I think was in 1946, because my recollection is now that it produced very little business.

Q. Now, in adopting your local display rate in 1935, the one which is now in effect, I believe, is the same as the one adopted in 1935?

[fol. 306] A. The rate?

Q. Yes.

A. The rates changed since 1935.

Q. I don't mean the amount of your rate: the rate structure.

A. It was a sliding scale then. It is now; with some amendments in classifications.

Q. Will you explain just how that local display rate operates, with respect to advertising in the States?

A. I think we have a one-time rate that shows so much: I think twenty-five hundred, five thousand, ten thousand, twenty, thirty, fifty, seventy-five, a hundred, two-fifty, five hundred, seven-fifty, and a million.

Q. Now, can the advertiser carry advertising in the Times-Picayune alone? morning paper.

A. Well, he will make a contract, as an illustration, for a hundred thousand lines. He makes that contract; he is required to run the hundred thousand lines in the morning, in the Sunday edition. Any advertising that he runs in the States, the evening edition, is given the corresponding bracket, hundred thousand-line rate in the States.

[fol. 307] By Mr. Flurry:

Q. Under that rate, which of the newspapers receive the benefit in the reduction in rate?

A. I don't know? In 1935 you are speaking about now?

The Court: I don't understand the question: Which newspaper receives the benefit of the reduction in the rates?

Mr. Flurry: Maybe I should go into the rate a little further, Your Honor.

By Mr. Flurry:

Q. Let's take an illustration, Mr. Tims.

Suppose that a local advertiser places 100,000 lines by contract in the Times-Picayune. At what rate does he obtain 10,000 lines in the States, by virtue of having a contract with the Times-Picayune?

A. At the 100,000-line rate that is shown on the bracket of the States.

Q. So that he would receive a reduction in his rate in the States, would he not, for the 10,000 lines, based upon the contract in the Times-Picayune?

A. It depends upon your construction of reduction. Rate-card making—I am not a genius. I don't know anyone that is.

Very well, the rate could have embraced 100,000 lines in the morning, the evening and the Sunday, but we elected to have the advertiser use the 100,000 lines in the morning and Sunday edition; and, if he used 10,000 lines in the evening

edition, he was charged the 100,000-line-bracket rate of the States.

[fol. 308] Q. I show you a 1950 local display rate card, Mr. Tims, being Government Exhibit 92, which was introduced yesterday.

I will ask you to state to the Court what the rate on the 100,000 lines to an advertiser who was advertising 100,000 lines in only the Times-Picayune is.

(Document handed to the witness.)

A. If he had a contract with The Times-Picayune Publishing Company for 100,000 lines in the Times-Picayune morning and the Times-Picayune New Orleans States Sunday, the daily rate in the morning edition would be 19 cents a line. In the Sunday edition, it would be 27 cents a line, and any advertising he ran in the evening edition would be 12½ cents a line.

Q. That is the 100,000-line rate for the States?

A. That is correct.

Q. Now, if he ran 10,000 lines of advertising in the States, without a contract with the Times-Picayune, what would his rate be?

A. Would he have a contract with The Times-Picayune Publishing Company?

Q. Yes; for 10,000 lines in the States, now.

A. If he had a contract for 10,000 lines in the States?

Q. And did not have a contract with the Times-Picayune?

A. He would pay a cent over this 23 cents or he would pay 24 cents a line.

Q. As against——

A. As against fifteen.

[fol. 309] Q. What did you say the 100,000-line rate on the States was?

A. Twelve and a half cents.

Q. In other words, he would pay 24 cents, as compared with 12½ cents, if he didn't have a contract with the Times-Picayune?

The Court: Is that correct? Let's go back to that. I don't follow that.

Mr. Flurry: I beg pardon.

The Court: It seems to me he would pay 15 cents, wouldn't he, if he had 10,000 lines in the States, alone?

A. He would pay 15 cents for it. For any advertisement that ran in the Times-Picayune, the rate would be 1 cent over what is shown on the 10,000-line rate, or 24 cents.

By Mr. Flurry:

Q. Will you explain where you get the 24 cents? I don't get that, either.

Mr. Wilson: If the Court please, I think we have gotten confused about which paper is which.

If Mr. Flurry will start over and get the papers straight, I think Mr. Tims can straighten out his testimony; but I think he is completely confused now.

By Mr. Flurry:

Q. If an advertiser who advertises only in the Times-Picayune morning, what rate would he pay for 100,000 lines?

A. He would pay 19 cents a line in the morning edition.

Q. That is all I am asking you.

[fol. 310] Now, if he has a contract for 100,000 lines in the Times-Picayune and takes 10,000 lines in the States, what does he pay for the 10,000 lines in the States?

A. He pays 12½ cents a line.

Q. Now, if he had no contract with the Times-Picayune morning for advertising, but had a 10,000-line contract in the States, only, what would his rate be?

A. In what paper?

Q. In the States.

A. It would be 15 cents.

Q. So that the result is that he would get a 2½-cent-per-line reduction in the States' rate, due to the fact that he had a contract with the company for advertising in the morning to the amount of 100,000 lines, would he not, sir?

A. That is correct.

The Court: Well now, pursue that a little more, if you will. I don't follow that, because it seems to me he would pay 15 cents a line in the States, if he had a contract with the Times-Picayune for 10,000 lines.

The Witness: That is correct, Your Honor. If he had a contract for 10,000 lines with the Times-Picayune, the rate on that card in the morning edition shows 23 cents a line; and, regardless of whether he ran 10,000 lines or 2,500,000 lines, the 10,000-line rate would apply on any advertising he published in the States which, in this case, would be 15 cents a line.

[fol. 311] The Court: You said if an advertiser published 10,000 lines in the States, alone, he would pay 15 cents.

The Witness: If he had a contract with The Times-Picayune Publishing Company for 10,000 lines, evening and Sunday, he would pay 15 cents a line for the daily evening edition.

Have I cleared it up for you?

The Court: In other words, he would pay 15 cents a line for 10,000 lines in the States, whether he advertised in the Picayune or not?

The Witness: That is correct.

The Court: All right. Proceed.

By Mr. Flurry:

Q. I am afraid we are not clear yet, Your Honor.

I understood you to say, Mr. Tims, that if he had a 100,000-line contract in the Times-Picayune and took 10,000 lines in the States that he would get a rate of 11 cents for——

A. What I said was——

The Court: No. Twelve and a half cents.

A. (Continuing.) What the Judge said is correct.

By Mr. Flurry:

Q. I am looking at the wrong bracket.

A. Let's say John Brown had a contract with The Times-Picayune Publishing Company and the contract read—He has the other side of it here (indicating). Here it is:

"The Times-Picayune Publishing Company agrees to [fol. 312] print the retail display advertising for one year from date on the following basis for John Brown: In the Times-Picayune daily and the Times-Picayune New Orleans States Sunday, space blank," (Let's say it is 100,000 lines

and it shows that the rate is 19 cents per line, daily, and a rate of 27 cents per line, Sunday.) "which we agree to pay for the space used."

When he signs that contract, any advertising that he publishes in the States in the evening edition is billed at the 100,000-line rate, or 12½ cents a line, but that lineage that he publishes in the evening edition is not credited to the consumption or the contract in the morning and Sunday edition.

Q. Is he obligated to take any advertising in the States?

A. None, at all.

Q. But whatever he does take, he gets at the 100,000-line States rate?

A. That is correct. If he signs the contract for 100,000 lines in the Times-Picayune morning edition and Sunday edition, he is not obligated to run any Sunday or not obligated to run any daily. He could take the 100,000 lines and run it in weekday, all of it, or he could take the 100,000 lines and run it all on Sunday.

Q. I will ask you this question: If he has a 100,000-line contract in the Times-Picayune, he would get the 100,000-line rate in the States, would he not, regardless of how much advertising he ran in the States.

A. I have testified that, yes, sir.

[fol. 313] Q. And he is not obligated to take any?

A. That is correct.

Q. But if he has no contract for advertising in the Times-Picayune morning, he gets the card rate applicable to the States' rate for whatever volume he contracts for in the States? Is that right?

A. Let me see if I understand your question. If he has no contract to publish advertising in the morning and Sunday edition and elects to make a contract with The Times-Picayune Publishing Company for blank number of lines in the evening edition and the Sunday edition, the rate is shown in any lineage that he chooses to run in the morning edition, he may, at a cent-a-line increase over what the stipulated rate is shown.

The Court: Well now, if he contracts with The Times-Picayune Publishing Company for 100,000 in the States,

alone, he pays 12½ cents or the 12½-cent rate, doesn't he?

The Witness: I would have to look at it; Judge. I can't keep those rates in my mind.

The Court: If he only took the States.

The Witness: If he signs a 100,000-line contract in the States at 12½ cents, he would have the privilege of using 30 percent of that, just as an illustration, in the evening edition and 70 percent of it in the Sunday edition, or, he could run the whole 100,000 lines in the evening edition.

The Court: And pay 12½ cents?

The Witness: Twelve and a-half cents, daily, and 27 cents on Sunday.

[fol. 314] The Court: So that the advantage in that arrangement is to the advertiser who advertises over 100,000, say 100,000 in the Picayune, but less than that amount in the States?

The Witness: That is correct, sir.

The Court: On any amount less than 100,000 that he runs in the States, he gets the 100,000 rate?

The Witness: That is correct, sir.

The Court: So, he benefits to the extent of the difference between the regular rate for lineage less than 100,000 lines in the States and what 100,000 lines would be?

The Witness: That is correct, sir.

By Mr. Flurry:

Q. Now, the one-cent-a-line reduction referred to in this furniture advertising: Did that apply whether you ran the same ads in the morning and evening papers?

A. Mr. Flurry, first, we have just been talking about a 1950 rate card and that 1-cent-a-line was abolished in 1946.

Q. I understand that.

A. I want to try to keep it as clear as I can.

Now, you are going back for the period of 1938, when we adopted it, until we discontinued it in '46.

What is the question.

Q. During the period in which that rate was in effect with reference to the furniture advertising.

A. It wasn't confined to the furniture advertising. I think [fol. 315] you have another photostat of my letter that you

referred to, but which I think you haven't read, in which we announced that there would be a 1-cent reduction; but that memorandum was not confined to furniture advertising.

Q. I believe you are right, Mr. Tims. In other words, it applied to all?

A. Yes, all retail advertising, and we watched it. It produced an inconsequential amount of business, and there is a very sound reason why it would, because a trial-and-error period in any business is the fact that the retail advertiser, after he runs in one paper he is pretty well sold out or shut out on that particular line of merchandise.

The only advantage of that 1-cent reduction would be on a motion picture house, where a picture usually runs for a week.

Q. Well, going back to my question: I ask you, again, if the 1-cent reduction applied only where the advertising was repeated in the evening paper in the same form as it was in the morning paper or could you get it without that?

A. Vice versa. If you ran an ad—and you, being the Beekman Clothing Store—in the evening States during that period of '38 to '46 and it was picked up and published in the morning edition, the 1 cent was taken off the rate, and vice versa, if it started in the morning edition and went into the evening edition.

Q. Well, I am not sure that I understand what you mean by "picked up". Do you mean by that that the ad——

[fol. 316] A. The same ad?

Q. The same ad.

A. Yes.

Q. In other words, the ad had to be identical in the evening paper as it was in the morning paper?

A. Except with a minor correction. I think you have another memorandum there in which I so state that we did permit them to change from tomorrow to today, or some minor correction like that.

Q. Now, is there any change in that situation under your local display rate card today with respect to the same ad?

A. The 1 cent? No, sir. I have told you and there is another memorandum. I don't know, when your men were in our office, whether they got it or not; but we have a copy

of it which we will be glad to furnish you, that in 1946 it was discontinued. The reason why, as I have stated before, is that it produced inconsequential results.

Q. I just merely want to get the record straight, Mr. Tims, on what the situation is with reference to the rate cards during the period in which this 1-cent reduction applied and what it is today.

A. It does not apply today, sir.

Q. Today, you can run a change of ads from the morning to the evening newspaper?

A. You can change it or you can run the same copy, but there is no reduction of 1 cent.

[fol. 317] Q. So that from the period beginning in 1935, when you adopted the local display rate structure in connection with advertising in the States based upon volume in the Times-Picayune morning until 1938, that stood without the one cent reduction, did it not?

A. To the best of my knowledge.

Q. And then in 1938, you adopted the one cent reduction where the ad was the same in the evening as it was in the morning, is that right?

A. That is the best of my recollection.

Q. And then in 1946 you abandoned that and went back to the straight proposition that the rate in the States applicable to the volume carried in the Times-Picayune morning applied for such advertising as was carried in the States, is that right?

A. That is my recollection. I can't keep all of the rate cards in mind since 1935.

Q. And also in 1946, when you abandoned the one cent reduction you also went back to the proposition that the advertisers could carry different ads in the morning and the evening papers?

A. I don't know just clearly just what you are leading to. I think that the question you are asking me is that when we discontinued the one cent pick-up rate, which meant that if an ad ran in the Times-Picayune this morning, that ad was picked up without any change in the evening edition, but the one cent reduction was given. I say the answer is correct and we discontinued it in 1946, but it appears from some records that you all found that

one or two advertisers were not notified of that change. One of them, as I recall, was Edison Brothers Shoe Store that operated out of St. Louis, with some retail [fol. 318] branches here in New Orleans, and I think we permitted them until they were notified it would be changed. That is my recollection of it.

Q. Does the local display rate card portray the complete rate picture?

A. To the best of my knowledge.

Q. On local advertising?

A. To the best of my knowledge.

Q. Does the local display card state that no oral conditions will be recognized?

A. I think that is a stipulation in the rate card.

Q. I ask you to examine Government Exhibit 92, your 1950 rate card, and state where on the rate card is the proposition that if you sign a States and Sunday contract that you can receive incidental advertising in the morning Times-Picayune at the rate shown on the rate card under the Times-Picayune morning rate for the amount of lineage contracted for in the States and Sunday plus one cent, as you stated?

A. It is not shown there. The regulations say: "Any advertiser contracting for lineage in the Times-Picayune Daily and Sunday will be billed for any States advertising published during the period of this contract at the rate shown under the States' rate for that number of lines contracted for. The lineage published in the States will not be credited to the total lineage contracted in the Times-Picayune."

Q. Well, where did you get this statement a little bit ago about this one cent increase?

[fol. 319] Mr. Wilson: What year is this contract?

A. 1950. That applies today. It is more or less——

Q. What do you mean by that?

A. In other words, I don't know just how many contracts we have, that is, the Times-Picayune Publishing Company may have, evening and Sunday. I don't think there are a great many of them, but as an illustration, let's say that there is the Roberts Jewelry Store that will

have a contract for a hundred thousand lines, evening and Sunday, who shall pay 12½¢ in the States and 27½¢ in the Sunday paper. Instead of charging them nineteen cents, his total cost is going to be twenty cents.

Q. When did you adopt that one cent increase for advertising in the Times-Picayune based on the Times-Picayune volume?

A. I don't recall.

The Court: I don't understand the question.

Mr. Flurry: I think I said it backwards, your Honor.

The Court: Read the question back, please.

(Question read by reporter.)

Q. Based upon the States' volume, I should have said, Mr. Tims.

A. I don't recall.

Q. Has it been since you abandoned the one cent reduction referred to in these furniture letters, with reference to furniture rates?

A. I don't recall.

Mr. Wilson: If the Court please, I would just like to be [fol. 320] straight on this. There is no such thing as a furniture rate. I mean there is a rate——

Mr. Flurry: I said "furniture letters".

Mr. Wilson: Will you read back what Mr. Flurry said?

The Court: He said "furniture letters", not "rates".

Mr. Wilson: I accept his explanation.

The Court: I would like to have you clear that up a little more if you can with respect to this additional cent.

Q. Has your local display rate cards ever shown that rate in the Times-Picayune based upon volume in the States, that one cent increase over the States' volume rates?

A. I don't think so.

The Court: The thing I find confusing is that you testified if they took a hundred thousand lines in the States, they would pay 12½¢ and if they took it in the Sunday paper, they paid 27½, at least 27¢. Isn't that 27¢ rate for the Times-Picayune daily and Sunday?

The Witness: No, sir. It is the Times-Picayune-New Orleans States Sunday edition.

The Court: Then if he takes it also in the Picayune——

The Witness: A cent over that shown.

The Court: Must he take a hundred thousand lines in the Picayune to get that rate?

The Witness: No, he may only take a thousand lines.

The Court: I see.

Q. In other words, it is just the reverse of the first [fol. 321] proposition except that you increased the rate by one cent for the Times-Picayune?

A. That, in substance, is correct.

Q. Based upon the volume of the States?

A. That is correct.

Q. Well, Mr. Tims, why did you increase your volume rate by one cent in one instance and in the reverse you did not increase it by one cent?

A. Because there is more acceptance to the Times-Picayune, the morning edition, than there is to the evening edition.

Q. I didn't get the answer.

A. There is more retail acceptance to the Times-Picayune morning edition than there is to the States evening edition.

Q. In other words, the purpose of this rate structure was to induce advertising in the evening newspaper, was it not?

A. Help it.

Q. Did the advertiser who was advertising in the morning Picayune have any advantage other than price advantage with respect to advertising in the States?

A. I don't quite understand your question.

Q. Well, would it be an advantage to the advertiser not to be bound to take any advertising or only such advertising as he might from time to time chose in the evening paper, or vice versa.

Mr. Phelps: We object to that question on the grounds that the contract does not bind the advertiser to take any amount of advertising. The contract merely provides that [fol. 322] if he does take a certain amount of advertising, he gets such and such a rate. But there is no obligation on the part of anyone who signs a contract to use a single line of advertising, so the advertiser is not bound. We think the question ought to be rephrased.

The Court: Let me hear the question, please?

(Question read by reporter.)

Mr. Wilson: Quite frankly, I do not understand the question.

The Court: I do not understand it. Is it any advantage, Mr. Tims, for an advertiser to have the privilege of advertising any amount of advertisement in the States which he may choose to do from time to time and receive a volume rate for it regardless of the amount which he runs?

Mr. Wilson: Well, if the Court please, that is what our contract gives him. I don't know whether it is an advantage or not.

The Court: I think he can answer that question.

A. It is good customer relations to do so.

Q. I am not asking you why you did it. I say is that an advantage to the customer?

A. It is a help to the customer, I think. But, on the [fol. 323] other hand, it may be a disadvantage to the customer, if you want to put it another way. As an illustration, Mr. Flurry, suppose the genius that I am in making rate cards (that you would make out of me; Petrillo) so elected to make a contract with the Times-Picayune Publishing Company for a hundred thousand lines, where the advertiser could use thirty per cent in the evening edition, twenty per cent in the morning edition, and fifty per cent in the Sunday edition. It would be a better contract from the standpoint of the advertiser because his consumption in all three editions could go on the total amount of the contract.

Q. Is that true with respect to local display advertising?

A. I am telling you it could be done that way, but we don't do it that way.

Q. Is it done?

A. You ask me is it an advantage to the advertiser. I am pointing out, Yes and No. It is, maybe, and maybe it is not.

Q. I am talking about to the advertiser in the States.

A. That is what I am speaking of.

Q. That has never been done, has it?

A. No, sir.

Q. Why did you adopt the kind of local display rates instead of a straight quantity discount, based upon the advertising carried in the three papers?

A. Just because we thought that was the best way to do it. There is no type of general thinking about rate cards. As an illustration, the New Orleans Item, [fol. 324] September, 1949, issued a new rate card based whereby you signed a contract for twenty-eight lines, five times a week. You can add that up quickly: that amounts to 7,280 lines; and was given a hundred thousand line rate, which, at that time, was 14 cents. In Louisville, for instance, they make a contract with their largest account, based on dollar volume. It may be that the dollar volume, that you will spend $250,000.00 a year, and if you ran advertising in the Louisville Times, the evening edition, it would cost you 24 cents a line. If you publish it in the morning edition, the Courier-Journal, it would cost 19 cents a line. But if you ran it in both it was 27 cents a line. I don't know of any slide-rule that applies on making a retail rate card.

Q. Isn't it true that under your present local display rate card that the total reduction in the rate which the advertiser receives is in the States advertising?

A. Well, I don't know what you mean by a reduction. There is no reduction from what is printed on the rate card, Mr. Flurry.

Q. Well, the lower rate which he receives.

A. Well, let's go back so I will understand you. If this advertiser has a hundred thousand line contract in the morning and Sunday edition, at this 19 and 27 cents any advertising that he runs in the States would be at that corresponding rate if it is 12½ cents a line.

Q. So that the rate which is lower is for the advertising in the States, is it not?

Mr. Wilson: Lower than what?

A. States' rate is lower for all advertising as against the [fol. 325] Times-Picayune.

Q. I don't get that, Mr. Tims.

A. You can look at the rate card and see that the Times-Picayune morning edition and the Sunday edition are

higher than the States, evening edition: if that is the question you are asking me.

The Court: Well, as a matter of fact, if he took the hundred thousand lines in the States, he would pay 12½ cents would he not?

A. For a hundred thousand lines in the States he would pay 12½ cents.

The Court: If he only took five thousand lines in the Picayune he would pay 20 cents.

A. Five thousand lines in the Picayune: he would pay 25 cents.

The Court: What date have you?

A. Five thousand lines show 25 cents.

The Court: If he had a hundred thousand lines in the States under contract he would pay 12½ cents?

A. That is correct.

The Court: If he wanted to run five thousand lines in the Picayune, wouldn't he pay 20 cents?

A. No, he would pay——

The Court: 19 plus 1.

A. He would pay 19 plus 1; yes, sir.

The Court: Now, if he did not have the contract for the hundred thousand lines in the States and he only ran five [fol. 326] thousand lines in the Picayune, he would pay how much?

A. He would pay 25 cents.

The Court: So there is a reduction in that respect, in the Picayune advertising rates.

All right.

By Mr. Flurry:

Q. Now, the same thing would be true in reverse, would it not, except that you would not have the one-cent increase attached to the States rate?

A. That is correct.

Mr. Flurry: May it please the Court, Government Exhibits 19 and 20 were identified yesterday. We wish to offer those in evidence at this time. They are pages from Standard Rate & Data Service, dated September, 1935, "G-20", and August, 1935, is "G-19."

The Court: They will be admitted.

(The documents marked "G-19" and "G-20" for identification were received in evidence.)

By Mr. Flurry:

Q. Mr. Tims, I show you two pages from Standard Rate & Data Service, being Government's Exhibits 19 and 20, and ask you to note the classified rates carried in the August, 1935, sheet and the September, 1935, sheet, and see if you can state to us when you adopted a rate on classified advertising which required the advertiser to take the classified advertising in both the morning and the evening papers?

Mr. Phelps: If the Court, please, the same objection is [fol. 327] made in that there is no requirement that any advertiser take any advertising with the Times-Picayune Publishing Company.

The Court: I think we understand that.

A. Well, I don't know, Mr. Flurry. Our records would show it. The August, 1935, Standard Rate & Data shows that the classified rates of the morning was 22 cents per line; evening was 15 cents per line, and Sunday was 30 cents per line, according to the Standard Rate & Data of August, 1935. And in September of 1935 the rates on classified were 30 cents a line per insertion, morning and evening.

Does that answer your question? So I presume it must have been in between that time.

Q. It must have been in between that time.

A. Yes, sir.

Mr. Flurry: Your Honor, the complaint states "about 1935," so we are trying to get the date established.

Q. Now, how many different classifications are included in what is called "classified" rate cards?

A. How many classifications there are in the classified?

Q. Yes.

A. There are as many, I guess, as there are lights in the St. Louis Cathedral. You've got Used Cars; you've got Furniture for Sale; you've got Help Wanted, Personals, Dividend Notices.

Is that what you mean, Mr. Flurry?

Q. You have a separate rate for each one of those?

A. No. The rate card will speak for itself. If you will [fol. 328] present it to me I will endeavor to identify it. We take on Bids and Proposals, Dividend Notices, In Memoriams; Death Notices are different from the other classified rates, but the whole rate card structure is shown on the rate card.

Q. Does the forced combination apply to all of those classifications?

A. Yes.

Mr. Wilson: Just a moment. I want to object. What do you mean by the forced combination?

Mr. Flurry: I think, Your Honor, Mr. Tims understands what I mean by forced combination. He used the term himself, as shown in one of the documents.

A. It is terminology. You may call it forced combination; I may call it unit rate.

By Mr. Flurry:

Q. It simply means if you take it in one paper you must take it in both.

A. That is right. The morning and evening or the evening and morning.

The Court: Let's call it the unit rate, so no one will be offended.

A. You buy it in Kansas City where you live. You should know.

Mr. Flurry: I am aware of that.

Mr. Kramer: Painfully aware of it.

[fol. 329] By Mr. Flurry:

Q. Now, when the unit combination rate on classified advertising was considered and put into effect, did the company calculate or consider the cost which would be saved by the newspaper?

A. No; I don't recall if they considered the cost to be saved by the newspaper, but it was tremendous. You can

very well believe, without being a newspaper man or an advertising man, to realize what it would cost in handling a two-line, three-line, or four-line classified advertisement. In order for it to run in one edition and not the other edition there would be utter confusion that you would have in your composing room. It is economically sound. It enables the advertiser to buy both of your editions at a very low rate on account of the economics of savings.

Q. Do you recall whether or not there was any change in the amount of the rates made at the time the classified unit combination was put into effect?

A. No, I don't recall if there was.

Q. Now, I believe, according to the two documents which I just showed you, from Standard Rate & Data Service, that the August rate showed morning, 22 cents per line, evening, 15 cents per line. The September card showed——

A. 30 cents for both.

Q. ——30 cents per line.

A. It shows 30 cents, as I remember reading them.

Q. Now, how did you arrive at the reduction of the com-
[fol. 330] bined rate taken separately, which would be 22 and 15; 37 cents per line, to 30 cents a line.

A. I can't recall how we arrived at it, Mr. Flurry. That has been sixteen years ago.

Q. Was it based upon cost factors? reduction in cost factors that were brought about by the carrying of the same ad in the two papers?

A. I never knew what the cost factors were. I knew there would be a substantial saving and help increase the classified lineage in the evening edition.

Q. You don't recall now just what you did consider in the change of the combined rate from the amount of 37 cents to 30 cents per line?

A. The economics of handling it and the fact that we had utter confusion in our composing room; why, trying to take five of, say, ten personal ads that were running in one edition and not running in the other, it would cost us more money to handle it that way than it would under one unit.

Q. What effect did the adoption of the unit classified rate have upon the lineage in the Times-Picayune morning?

A. I can't recall. I would have to go back. I will be glad to show you charts; that occurred back in 1920.

Q. Do you recall what effect it had upon the lineage in the States?

A. I think it increased the lineage in the States, evening edition.

Q. Did the lineage in the States rise to a practical point of [fol. 331] coincidence with the lineage in the Times-Picayune, morning?

A. Yes, because if we were selling it in the unit, it would naturally be the same.

Q. That is the natural result, is it not?

A. That is the natural result.

Q. Now, is your lineage in classified in the Times-Picayune and the States in coincidence today?

A. Yes; with the exception, I believe—We may as well not beat around the bush; let's put it in the meat so we can see it.

If you are talking about classification, Over-the-River, that is sold in the evening States: not in the morning edition. It is contracted evening and Sunday. The reason for it is that the potential is not as great and it is across the River where we have, oh, I don't know, probably the equivalent of a column or a column and a half a day.

Now, I think in my deposition when Mr. Leonard was interrogating me as to the reason, Captain Ross, who was the Editor of the New Orleans States for forty odd years, married a lady by the name of Murphy, who lived in Gretna (a good Irish name), and her brother was the Over-the-River correspondent of the States; and for a great many years, and up to a short time ago, the Over-the-River news would be run and there would be, like little readers in between them, see, and then we came to the conclusion that the readers notice, sign "Adv." should be taken out of it and run the news this way; and with the Over-the-River ads alongside of it. That, to my knowledge, was the only——

Q. When was the Over-the-River classification adopted? [fol. 332] Was it adopted at the same time the unit combination rate was put into effect?

A. I think, Mr. Flurry, the Over-the-River was running in the States when we purchased it in 1933.

Q. So that it has always been as it is today, insofar as the structure is concerned: not the amount of rate?

A. Yes; to my knowledge. I happen to have an example, if you would like me to show you how it was handled and how it is handled now; if you wish me to.

Q. Go ahead.

A. Shall I show them to His Honor or to you first, Mr. Flurry?

Mr. Kramer: Show them to us.

(Witness obtains documents and exhibits them to counsel.)

A. That is how we handle it now; and thirty years or more. Here is how it was handled (indicating): "Over-the-River:" the news and the little reader. See; it's marked, "Adv." in there.

Q. Show them to the Judge, please.

(Documents exhibited to the Court.)

Q. Which newspaper has the largest circulation (that is, newspaper published in New Orleans), has the largest circulation in the Over-the-River area?

A. I think the States has. It always did have. I don't know what it is today. I can give you the reason why they did.

Q. Now, Mr. Tims, day before yesterday morning you heard the testimony of Mr. Ladreyt, did you not?

A. Yes, I did.

[fol. 333] Q. Mr. Ladreyt made this statement, which I call your attention to, taken from page 85 of the Transcript:

> "My opinion is that it would be just an imposition on retail advertisers to force them to carry the same copy, identical copy, from one issue to another, because the retail advertisers gear their advertising to produce immediate over-the-counter results, and an advertiser, department store or dress shop, or other merchant, may have a certain supply of merchandise: dresses, for instance, at a bargain, or a certain num-

ber of pieces of furniture at a bargain, and they may be sold out by eleven o'clock in the morning if they appeared in the morning issue; and it would be not only a hardship on the advertiser but also on the readers if the merchant were unable to supply that merchandise the next day, or even later in the same day, as far as that goes, and unlike general advertisers, they are selling brand merchandise, and they have distribution throughout the city and territory, and their merchandise is staple; and it is offered for sale every day."

Now, do you agree with that statement, Mr. Tims?

A. I do.

Q. I ask you if it is not also true that that situation applies with reference to classified?

A. Not to the degree.

Q. You do have a great number of classified advertisers [fol. 334] who are seeking quick results, do you not?

A. Yes; I am sure there are.

Q. And frequently the first run of the ad satisfies the customer's advertisement, does it not?

A. I am sure. You may lose your handkerchief and try to get in the States this afternoon, and maybe it is sold by the time the States comes out to him.

Q. For example, on automobiles; isn't that true?

A. Well, that is something I am not in position to know. These lots are full of cars. You are talking about used car lots, I presume.

A. Now, that would apply to Help Wanted, too, would it not?

A. All classifications.

Q. Somebody puts in an ad for a job; somebody advertises for an employee.

A. Take the six or seven papers we carry this morning, and all those classified advertisements are required to run in the morning and evening editions, if it is a washer they want to sell, or want to purchase a boat: whatever it may be.

Q. Now, what was the reason for your making a distinction in the requirement that the classified advertiser use

both morning and evening with the same advertisement in each, and permitting the local display advertiser to use either the morning or evening and to use different advertisements?

A. I think Mr. Ladreyt's statement to you, which you have just read and which I subscribe to, is my answer.

[fol. 335] Q. Now, when was the first unit rate adopted with respect to national advertising of any kind?

A. As I recall, partially in 1940.

Q. Will you state to the Court just how that operated?

A. Well, that is going back a good number of years, too, but prior to 1940 we had what is termed in the industry a flat rate, morning or evening, and a combination rate. There had been a great many meetings held by, I believe, the four A's, which is the American Association of Advertising Agencies, and the Association of National Advertisers, referred to as the ANA.

Q. I haven't asked you why you adopted it, Mr. Tims; I have asked you only to state what it is; to refresh your recollection.

A. I thought you asked me—Read the question back to me, please.

Mr. Wilson: May we have the question, Mr. Hickman?

(The Reporter read the last question.)

A. It is Government Exhibit "G-22." (Examining document.) "Issued May 1st, 1940, In Effect June 1st, 1940." Shall I read it all?

The Court: No.

By Mr. Flurry:

Q. Now, will you state to the Court just how that rate operated?

A. Yes. An advertiser——

The Court: Which rate is this we are talking about?

A. This is the general advertising rate.

[fol. 336] The Court: All right.

A. The general advertiser could purchase ten thousand lines in our morning edition at an individual rate or in our evening edition at an individual rate, or he had a

combination rate from twenty thousand lines to fifty thousand lines. We sold it as a unit in the morning and evening editions. Does that answer your question?

Q. Well, not fully, I don't think, but I will ask you some other questions.

Let's take this illustration, Mr. Tims: Say an advertiser contracted with The Times-Picayune Publishing Company for twenty-five thousand lines of advertising, and he had theretofore carried ten thousand lines in the Times-Picayune. What change in his rate would be made on account of that rate card?

A. If he carried ten thousand lines previously in the Times-Picayune? Is that what you asked me?

Q. He wants to carry ten thousand lines in the Times-Picayune and he has carried it. But he wants to increase it to twenty-five thousand lines. What will he have to do under that contract in order to obtain a lower rate?

A. Than ten thousand lines? Add the States so he could still purchase the twenty-five thousand lines at the ten thousand line rate of the morning edition.

Q. That is right. Now, if he wants to get a rate lower than the ten thousand line rate in the Times-Picayune what would he have to do with respect to the twenty-five thousand lines?

[fol. 337] A. To run in the morning and evening edition.

Q. What part would he have to run in the morning and evening?

A. If he run the fifty thousand lines he would run it all as a unit.

Q. On my illustration, so we can get a comparison all the way there of the twenty-five thousand lines, what part of the twenty-five thousand lines would he have to run in the morning and evening paper in order to get a lower rate than the ten thousand line?

A. He would have to run the twenty-five thousand in each, is my understanding.

Q. He would have to run all of it?

A. Yes, sir.

Q. So that if the advertiser chose to s[illegible]k a lower rate in the Times-Picayune than the regular ten thousand line

rate he would have to take advertising in both the morning and evening up to the amount he desired?

A. That is correct, sir.

Q. Now, under that contract was it necessary that the advertiser use the same ad in the morning and evening papers?

A. Yes.

Q. What period of time did he have in which to repeat the ad that was run in the morning and the afternoon paper?

A. Well, Mr. Flurry, after listening either to Mr. Ladreyt or Mr. Kelley's testimony, I got drowsy during the last part of Mr. Kelley's testimony and I don't recall all of it. Unless I go back and review these rate cards [fol. 338] I would not be able to answer the question. I am going to answer it without reviewing them, after hearing the other testimony. It would take three days——

Q. Well, we object to that.

A. Well, if you are trying to confirm one time it is three days. It was three days and now it is six days. I think that is correct.

Q. Well, is that the 1941 card you have there?

A. This is the 1940. I will be glad to read it and see if that is just what it says.

It says here, under "C":

"Advertisements run at combination rates may first appear in any paper but succeeding insertions must follow within three days: same size advertisement and same copy."

That is what it said on this rate card in 1940.

Q. In three days.

A. Didn't I say three days?

The Court: I think you did.

Q. Now, you don't recall what it is at the present time?

A. Except from the testimony that I heard yesterday. I can't keep all of that in my mind. I do pretty good.

(Brief recess.)

[fol. 339] Q. Now, Mr. Tims, when was the next change made in your general advertising rates?

A. What period are you asking me from?

Q. After the 1940 change.

A. I don't know. I would have to look at the rate cards, Mr. Flurry.

Q. Well, don't you remember making a change in your national or general advertising rate structure in 1950?

A. I am sure that we made a number of changes between '40 and '50.

Q. I don't mean in amount, Mr. Tims. I am speaking of your structure, the way in which your rates were applicable to the advertising in the different papers.

A. Yes, it was changed in 1940. Up through '20, '30 and '40, we sold it in a unit, the morning and evening edition, and in 1949 we announced a new rate card effective February 1, 1950, where the unit rate applied in all brackets.

Q. In other words, that required the advertiser, if he took advertising at all in your paper, to advertise both in the morning and the evening papers, regardless of the amount of advertising carried?

A. Yes, and he would have—if it was 10,000 lines, he would get the 10,000 line rate morning and evening.

Q. In other words, it had no reference to a particular quantity as in the previous rate structure?

A. That is correct.

[fol. 340] Q. Now, do you recall the meeting which Mr. Kelley and I believe Mr. Ladreyt mentioned?

A. I heard the testimony.

Q. About October or November?

A. I remember Mr. Ladreyt's testimony a little more than I do Mr. Kelley's because I was drowsy about that time.

Q. Do you recall a meeting held in about October or November of 1949 in which Mr. Ladreyt and Mr. Kelley and Mr. Jann were present?

A. Yes, we had several meetings with them in 1949, but approximately that time, yes.

Q. How many meetings would you say were held in the Fall of 1949, say, after the first of September, 1949?

A. That was the only one. We had had meetings prior to that but—I had one with Mr. Kelley and Mr. Jann in New

York at the Waldorf in April of 1944. Then when they came down to attend the Association of Newspaper Advertising Executives' Convention, which I think was in June of 1949, I discussed the national or general rates with them at that time.

Q. Were they present in the meeting, as Mr. Ladreyt has said in October or November, 1949?

A. Yes.

Q. Did you call Mr. Jann & Mr. Kelley and invite them down?

A. My recollection is that I did.

[fol. 341] Q. What was the purpose of your calling them down?

A. To discuss a new rate card, what we were going to do to get increased revenue, to continue to make money.

Q. And what was the discussion at that meeting?

A. The discussion was the amount of money that we could increase our revenues in that particular branch of advertising. I was confronted with raising the rate, which would include the milline rate as well if I had it just in a unit bracket, but by putting it together as a unit would lower our milline rate which would enable us to compete more with the Kansas City Star that has a milline rate of about $1.25, the Louisville Courier Journal, the Baltimore Sun or even the Chicago Tribune that today we in New Orleans are competing with other markets to get the national advertising dollars to come down here, and in my judgment, that would be the most effective way to give them a lower milline rate, by selling the unit of both papers.

Q. In other words, you were concerned with your competition in Kansas City and New York and so forth, rather than your competition in New Orleans, is that right?

A. Well, of course, Mr. Flurry, I won't sit in this chair and tell you that we don't know that the Item is publishing a newspaper on Union Street, but after all is said and done, the advertising dollar of the national advertiser is a very important dollar from the standpoint of how you get it and what it costs you to handle it. It comes down in mats, it comes down in plates, but my chief concern and my concern today is the advent of television, of outdoors.

That is what we have got to compete with, impressions. [fol. 342] We have got to sell readers and in doing it, we must go out and sell them as cheaply as we can, and if you will look at your milline rate of $2.14 compared to, say, the Kansas City Star at $1.25 or the New York Daily News at $1.18 or the Louisville Courier Journal at around $1.83, you can see the importance of why it is to our advantage to try to have a milline rate as attractive as possible.

Q. Now, what you are offering to the national advertisers, Mr. Tims, is it not the readers of those advertisements?

A. We are offering the readers of these editions, yes, sir.

Q. Are you offering them any substantial readers in Kansas City?

A. The Times-Picayune Publishing Company?

Q. Yes.

A. No, but the Kansas City Star is offering their readers to Calumet Baking Powder Company, and to Lever Brothers, and while they can show that the milline rate is so attractive, schedules can be built for those kind of markets and exclude ours down here. As an illustration, I think it was stated here yesterday that on Camel cigarettes they had an "A", "B", "C" schedule and the "A" schedule went to papers whose milline rate, I believe, was either two or two and one-half dollars and those that were above two and one-half dollars, they got a smaller schedule.

Q. Isn't it a fact that national advertisers, in order to reach the New Orleans market, namely, the New Orleans readers, by newspaper medium, that they must do it through the newspapers published in the City of New Orleans?

[fol. 343] Mr. Phelps: Excuse me, I didn't hear that question. I apologize, would you read it, please?

(Question read by reporter.)

A. I would answer that question this way, Mr. Flurry, that they could reach viewers or listeners through television——

Q. I said through newspaper media.

A. Well, they would have to use newspapers if they are going to buy newspapers.

Q. If they are going to use newspapers to reach the readers in New Orleans, it must be the New Orleans newspapers.

A. If it is readers, but there are a great many national advertisers who will buy some other media of advertising. Take Elgin Watch——

Q. Well, we understand, Mr. Tims, that newspapers don't get all of the advertising.

A. You bet we don't.

Q. Now, has the introduction of the unit rate of general advertising brought more newspapers advertising accounts to New Orleans?

A. I would have to check the records on that, Mr. Flurry.

Q. So you are not able to tell the Court whether that was the result as you say it was the purpose?

A. The result as well as the purpose?

Mr. Wilson: I object to that question, because the witness has not testified that the purpose was to bring more accounts to New Orleans, and I appeal to the record.

[fol. 344] Q. Well, I will ask you this question, Mr. Tims; was it your purpose, in line with your explanation with reference to the milline rate, to bring more advertising of national advertisers to New Orleans in the newspaper field?

A. We hoped to do so and retain those that we had.

Q. Has it done so?

A. Well, media records are very—you know what the media records are. I haven't had time to analyze media records personally. I think Mr. Ladreyt answered that question——

Q. Don't you keep up with the effect that these rate changes have on your advertising results?

A. No. As a matter of fact, all I can look for is on that statement at the end of the month, that last line. I've got so many things to do around there, I don't know whether I am coming or going.

Q. So you don't know whether or not the unit rate on general advertising adopted in 1950, made effective in 1950, increased the number of general advertisers in New Orleans or not?

A. Do you mean the individual number of accounts or the total number of lines that we carried?

Q. Yes, the number of advertisers, national advertisers advertising.

A. I can't answer that without checking it.

Q. Was an advertisement in your general advertising contract which became effective in 1950 required to be carried identically the same in the morning and afternoon papers?

[fol. 345] A. When we announced the new rate card on December the first, 1949, effective February the first, 1950, we carried all contracts to completion, as we always have done in the retail field, the retail contracts, general contracts and classified contracts. To illustrate, if an advertising agency had a contract with a client that was sent us on August 15, 1949, this new rate card was not invoked or did not become effective until that contract expired. If any business came in between December 1, 1949, and February 1, 1950, it would be published at the previous rate card, but any new business after February 1, 1950, this rate card applied.

Q. So that you had a more or less continuing change through the year 1950?

A. Yes, sir.

Q. Until all of the old contracts had expired?

A. Until all of the old contracts had expired. That is correct.

Q. Now, was the decision to adopt that rate structure made at the meeting held in October or November, 1949, at which Mr. Kelley and Mr. Jann and Mr. Ladreyt were present?

A. I spoke about doing it in April of 1950——

Q. I am simply asking you whether or not it was decided then.

A. Yes, after I had gone up and discussed it with Mr. Nicholson and he agreed to do it.

Q. Then you came out with your announcement of that rate about December first, was it not?

[fol. 346] A. That is correct.

Q. How long before your announcement on December

first was it that that meeting was held at which the decision was made?

A. I can't recall exactly, Mr. Flurry. I think that we discussed it for the third time that year, some time in November. If it was the fifth of November or the eighth of November, I can't recall that.

Q. You don't recall whether it was the first part of November or the latter part of November?

A. I would say, if I had to make a guess—and I don't like to guess—I would say it was about the middle of November.

Q. That is your best recollection?

A. Yes, sir.

Q. Now, was Mr. Nicholson called into that meeting?

A. We never call Mr. Nicholson into meetings. He calls us to meetings or we go to him.

Q. Well, did you go to Mr. Nicholson's office at that time?

A. Yes, I did.

Q. Did any of these other gentlemen who have been named go?

A. I don't recall if they did or not. Maybe Mr. Ladreyt went up with me. As a rule, when he is feeling rather well, I used to be up there probably fifty per cent of my time, talking to him about something or other.

Q. What part did Mr. Jann and Mr. Kelley take in that meeting?

[fol. 347] A. Well, they discussed what the impact of this would be in the national field, and I was particularly interested in getting what resistance they thought we would get from the advertisers or the advertising agencies. See, I am here in New Orleans, and they have these various offices in New York, Detroit and Chicago. I, myself, do not contact national advertisers or advertising agencies, so I have got to rely upon their recommendation or their judgment when I want to ask questions.

Q. Did you get any resistance to the unit combination rate on general advertising?

A. I got none direct to me personally from any advertiser or advertising agency, but I think that I received a letter or two letters or three letters from Mr. Jann and Mr.

Kelley. The only thing I did with them was to send them down to Mr. Ladreyt. That was his department from then on.

Q. I show you Government Exhibit 99, and ask you to identify it.

A. Yes, sir, it is a letter dated December 8, 1949, addressed to me.

Q. By whom was it written?

A. By Henry Jann of Jann & Kelley, Inc. Do you want me to read it?

Q. No.

Mr. Flurry: We offer in evidence Government Exhibit Number 99.

[fol. 348] The Court: It is admitted.

(The document marked "G-99" for identification, was received in evidence.)

(Mr. Flurry read Government Exhibit 99.)

[fol. 349] By Mr. Flurry:

Q. Now, Mr. Tims, was the greater number of general advertisers in 1949, before this general advertising rate change in 1950, using the Times-Picayune morning? Or the States?

A. Let's see if I understand the question.

Prior to the time this new rate increased?

Q. In 1949.

A. In 1949, of the total amount of general advertising that we were carrying in the Times-Picayune morning edition, as best I can recall, it would be that we were carrying about 70 or 75 per cent of it in the afternoon edition.

Does that answer your question?

Q. I asked: In 1949, was there a greater number of advertisers carrying general advertising in the morning or in the afternoon papers?

A. Well, I am sure we carried more advertising—We have no record on the individual advertisers; but the morning edition carried more general advertising lineage than the evening edition did.

Q. Would you say that it carried the advertisements of

more advertisers, general advertisers, in the morning than the evening?

A. The morning edition carried more than the evening edition?

Q. Yes.

A. Yes.

Q. Now, was the greater number of advertisers, using the [fol. 350] morning or the evening paper, using only one newspaper? or three newspapers?

A. I can't speak from the standpoint of advertisers. The only thing that I have before is the record, which shows lineage.

Now, I can answer your question from the standpoint of lineage.

Q. You don't know, then, as to the number of accounts for advertising?

A. Individual accounts? No, sir. I can't give you that.

Q. Now, I believe you said you knew more about the lineage advertising.

A. I can keep that roughly in mind. I couldn't keep it in mind that we had 652 national advertisers or 318, but I can keep round figures, to a degree, and that is rather difficult to do.

Frankly, I would much prefer, before I answer these kinds of questions, to refer to the record.

Q. Well, I am not going to ask you for exact numbers, Mr. Tims, but just give me, to the best of your recollection, what happened.

Did the increase in the general advertising of the States in 1950 and the first quarter of 1951 come to a greater extent from advertisers who had theretofore had general advertising contracts with the company or from newly-acquired advertising accounts?

A. A study would have to be made of that, Mr. Kramer. What occurred was that the potential, let's put it, of the evening edition were those accounts that formerly used our morning edition, that we were now in position to [fol. 351] have use our evening edition.

Now, there is a tremendous mortality in national advertising, and that is why it is hard to give you an accurate answer.

Q. Well, do you or do you not know the answer?

A. I beg pardon.

Q. I say. Do you or do you not know the answer?

Mr. Wilson: Read the question.

(The Reporter read the question.)

A. In my opinion, it came from the accounts, chiefly, that had run schedules in the morning edition.

Does that answer it?

Q. Yes. Thank you.

Now, what effect, Mr. Tims, did the unit combination rate adopted or put into effect in 1950 have upon the company revenues?

A. It increased the company revenues.

Q. Was that increase principally from advertising in the States or from advertising in the Picayune?

A. Well, we had looked upon it as a total, although Mr. Adams in the credit department, who handles the receivables, broke it down. I don't know just what way he did it.

I think you have got him subpoenaed and he can answer it. I can't answer that question; but I look at the total picture at the end of the year and see that the general advertising revenue of the publishing company had increased.

Q. You don't know whether that came largely from addi- [fol. 352] tional advertising in the States or additional advertising in the Picayune?

A. No. I was going to say that, certainly, a good deal of the increased revenue came from the advertising that started appearing in our evening edition; but to break it down, why I couldn't do it.

I do know from my recollection that on our statement—and you have it before you—that it is broken down in retail, general and classified, that the general earnings were increased on the whole.

Q. Now, I show you Government Exhibit 95, Mr. Tims, and ask you to please identify that.

(The document referred to was marked G-95 for identification.)

(Document handed to the witness.)

A. This is a letter written on March 18, 1941 to Mr. C. C. Covey, vice president of the National Stores Corporation of Atlanta, Georgia, signed by me.

There is another one attached there, isn't it? But this is 95.

Q. This is the one you described.

Mr. Flurry: We offer in evidence Government Exhibit 95.

The Court: It will be admitted.

(The document referred to, marked G-95 for identification, was received in evidence.)

(Mr. Flurry read Government Exhibit 95.)

By Mr. Flurry:

[fol. 353] Q. Now, Mr. Tims, this referred back to the rate which we were discussing in connection with the furniture advertising sometime ago, does it not?

A. That letter is dated '41, isn't it?

Q. Yes. March 18, 1941.

A. And weren't the memoranda we were discussing in '38?

Q. That is right; but I say this (indicating) referred to the same rate structure?

A. Yes. It did. It would be the same thing. There was a Darling Shop that had headquarters with the Liggett Drug Store.

Q. In other words, it was local display.

A. Local retail.

Q. Local retail?

A. Local display.

Q. Is there any difference?

A. Yes. In the old days, they used to call it local display. If the Merchants Coffee Company was a local concern and ran advertising, it was local display. Now, they look upon it as general advertising, because they are manufacturers with general distribution.

Q. Now, I call your attention to this document and I will ask you, Mr. Tims, in your statement there with reference

to the furniture advertising carriage if you would have made such a statement, unless you had been carrying more furniture advertising than your competitor at that time in 1941.

(Document handed to the witness.)

[fol. 354] A. What particular paragraph are you referring to, Mr. Flurry? Are you referring to some paragraph in this letter?

Q. Yes.

A. You mean, the third to the last paragraph: "I am enclosing a copy of the New Orleans States of Tuesday, March 13th, in which you will note that the leading furniture merchants of New Orleans are well represented"?

Q. Yes.

A. What is your question, now?

Q. I wanted to know if you would have made the statement contained in the third to the last paragraph, if you had not had more advertising lineage in the furniture line?

A. I just don't quite understand your question.

Q. Well, I believe you testified, Mr. Tims, in connection with the other letters of 1948. We asked you what the result of that was upon the advertising carried by the——

A. States?

Q. ——by the States.

A. Yes.

Q. And also by the Picayune, and you said that you didn't know. That is my recollection.

Now, I am asking you if you would have made this statement contained in this letter of 1949, if you had not had——

Mr. Wilson: Will you read the statement that you are referring to, please, so that the question may be clear.

[fol. 355] Mr. Flurry: It is the third paragraph from the last one.

Mr. Wilson: Read it, so the record will be clear.

Mr. Flurry: "We are enclosing a copy of the New Orleans States of Thursday, March 13th, in which you will

note that the leading furniture merchants of New Orleans are well represented."

A. Well, I guess if we get a copy of the States of March 13th, it will show what they were.

I just still don't follow your question.

Q. You would not have been using that as a salesman's talk, would you, unless it had been favorable to you?

Mr. Phelps: If the Court please, I don't think the question is clear.

If the Court will permit me, I think I may be able to clear up the difficulty.

The Court: I think Mr. Flurry can clear up any difficulty in connection with his question.

Mr. Phelps: I was objecting to the form of the question.

By Mr. Flurry:

Q. Do you understand me?

A. You said 1945, I think, when you were reading this letter and it was dated March 18th. I think the transcript will show 1941.

It is rather difficult for me to follow you with all the different conflicting dates and going from here into there.

Q. I will start over.

[fol. 356] A. All right. I will do my best for you.

Q. That is a salesmanship letter?

A. That is a salesmanship letter.

Q. In other words, you are trying to sell advertising in that letter?

A. Right.

Q. Now, I ask you with reference to these letters——

Mr. Flurry: Will you give me 96 and 97, please.

(Documents handed to Mr. Flurry.)

By Mr. Flurry:

Q. I show you Government's Exhibits 96 and 97.

(Documents handed to the witness.)

A. I have seen these.

Q. You remember the questions with reference to that?

A. Yes. I do.

Q. I ask you if that letter indicates that in 1941 you enjoyed more advertising lineage and local display by furniture dealers in the City of New Orleans than did your competitors?

A. I can't answer that question.

Mr. Wilson: I object to that, because the letter speaks for itself.

A. I am talking about an individual day in this letter, where we probably may have had a cooking school. I don't know. In 1941 is ten years ago; but on that particular day, we may have had a very representative showing of furniture advertisers; but there is nothing from here to indicate [fol. 357] that we had increased in any amount the furniture advertising classification. That can be given to you from the official records.

Q. Would you direct a prospective customer, as a sales talk, to advertisements which did not show that your company was carrying a greater lineage than that of the competitor?

A. Did I say anything——

The Court: I don't think that follows at all. The paper might have carried a great deal of furniture advertising, but it would still have been less than the Item had. The letter doesn't divide a comparison with respect to furniture advertising, does it? Do I understand it?

It simply says: "Look at our paper and you will see a lot of furniture advertising."

That doesn't mean that there was more than the Item had, as I see it; so, I don't think he can answer that.

Mr. Flurry: We will go ahead.

By Mr. Flurry:

Q. Now, Mr. Tims, can you name, specifically, any new general advertising accounts which came to New Orleans because they liked the unit combination rate which you had put into effect?

A. You recognize my position on The Times-Picayune Publishing Company, but I don't know all the detail that goes on.

Mr. Ladreyt was on the stand yesterday and I am sure that he, as a national advertising manager, can testify about that.

[fol. 358] I can't testify to that question, "yes" or "no".

Q. Do you know? Or do you not know?

A. I do not know.

Q. Thank you.

When did you first learn that The Item Company was considering the publication of a Sunday edition?

A. Well, I had learned it. I heard about it. I didn't learn about it. There is a difference, I appreciate.

I learned about it when I saw it in their paper, and I think they made an announcement in October, the early part of October of 1949. That is when I learned about it; but it was rumored that they were going to do it from the time they came here.

Q. Did you discuss that information with Mr. Ladreyt or Mr. Murray or Mr. Nicholson, L. K. Nicholson?

A. I am quite sure they all heard it at the same time I did, Mr. Flurry. I don't remember if I discussed it or not.

Q. Did you have any conferences in respect to that?

A. About them starting a Sunday paper? No. I took it in my stride.

Q. Did you discuss it with any of the parties over at The Times-Picayune Publishing Company?

A. I can't recall that, Mr. Flurry. I think everybody saw it printed in the paper. What discussion was needed?

Q. So, you don't remember having discussed it with reference to anyone?

[fol. 359] A. Well, I am quite sure I did, but I can't recall the incident. Naturally, it was news, and you discuss news.

The Court: I think it might be helpful if you were a little more specific in stating what you mean by a discussion. Two men might meet in the office and just casually talk about it.

By Mr. Flurry:

Q. Did you at any time discuss with Mr. Nicholson, Mr. Murray or Mr. Ladreyt or any one of the other operating heads at The Times-Picayune Publishing Company with

reference to The Item Company publishing a Sunday paper and how that would affect the competitive picture in New Orleans?

A. I am sure that we must have discussed it; but the nature of the discussion or who I discussed it with, I don't recall.

Q. You don't recall that any meeting was held with respect to that, early after that announcement?

A. There may have been.

Q. Well, can you say, definitely, whether there was or wasn't a meeting?

A. I wouldn't want to make it as a statement that there was or that there was not.

Q. You mean, you can't recall?

A. I can't recall. I have a pretty good memory.

Q. You can't recall to late in '49?. Would you say from that memory that there was no such meeting?

A. To the best of my recollection, I don't recall it.

[fol. 360] Q. Do you remember when The Item Company took over the operations of the Item?

A. I think it was in June, 1949, or thereabouts.

Q. Do you remember talking with Mr. Nicholson or anyone else at The Times-Picayune Publishing Company between that date and the date of the publication or the announcement of the publication of the Sunday Item with respect to any counter-measures to be taken by The Times-Picayune Publishing Company?

A. No. I don't recall any. We may have set down and shown that we improved the product to give a better product. I don't know if you call that a discussion. I don't even remember that, but you asked the question from the time the Item was purchased and I answered you that I thought it was around in June of 1949.

Do you mean from the time of June, 1949, to the announcement?

Q. I mean, from July, I believe it was, that The Item Company took over, did it not?

A. I thought it was in June.

Q. You may be right, but it is my recollection that it was in July.

From that time up to the time that it announced its

intention to publish a Sunday paper is the period of time I am getting at.

A. From the time that the new people bought the Item?

Q. Until they announced the publication of the Sunday paper?

A. Until they announced a Sunday paper, did we do what?

[fol. 361] Q. Did you confer or discuss with Mr. Nicholson or anyone else over at The Times-Picayune Publishing Company the taking of any counter-measures by the company with respect to the Sunday edition?

A. No. What we did, as I recall it, and we considered for a good number of years to improve our Sunday product.

I think it was in June of 1949 when Mr. John Sterling, who is president of This Week Magazine, was in New Orleans. He had seen us in New York in April, endeavoring to sell us This Week Magazine, which is published by some thirty-five or forty of the leading newspapers of the country. We were publishing our own locally-edited magazine, and I felt, back in April and even before that, that it would be a good thing to add This Week Magazine, because it would contribute a magazine that editor appeal was built around romance and fiction and adventure, in addition to our own. The Atlanta Journal had This Week in addition to their own, and the St. Louis Globe Democrat and a great many others.

It had nothing to do as far as buying the Item. We decided that in June and signed the contract, as I recall it, before the Item was sold.

Q. Had this publication, prior to that time, been carried by The Item Company?

A. It was carried, as I recall it, by The Item Company up to the time that their Sunday paper was discontinued in 1941. That is my recollection.

Q. And they had no newspaper connection in New Or-

[fol. 362] leans from that time?

A. During that period of time?

Q. From that time until it was offered to you?

A. Oh, it had been offered to us a great many years during that time.

Q. Well, did you then take it?

A. We decided to take it, as I recall it, in June, 1949.

Q. Did this gentleman who called on you in respect to that from New York, I believe you said—Did he say anything about why the Item was not then using it or was not using it?

The Court: The Item didn't have a Sunday paper, then, did they?

The Witness: No, sir.

Mr. Phelps: If the Court please, I look on this as an effort to broaden the pleadings.

The pleadings charged that the page contents of the States had been increased, apparently in an effort to either meet or suppress competition from the New Orleans Item, evening.

That charge has been withdrawn. There is no charge, as far as the record shows, that the editorial content of the Sunday Times-Picayune was in any way changed in order to meet or suppress competition from the Sunday Item.

It seems to me we are going a little far afield in the lawsuit, unless the Government wants to amend its pleadings, and it is a little late to do that, in view of the length of time [fol. 363] this lawsuit has been before the Court already.

Mr. Flurry: May it please the Court. Our questions are not directed to that end at all. We are trying to get at what Mr. Tims, the witness, knew with respect to that particular question that I just asked him, as to what he knows about the discontinuation of the Sunday Item in 1941 and the republication of the Item in 1950.

Mr. Wilson: If that is the testimony, I move to strike his testimony, because that has no bearing, whatever, on what Mr. Flurry is asking, if that is what the question is.

The Court: I can't see that it is material. It is in. Let it stand.

In other words, I understand his testimony is not directed to these so-called efforts to anticipate this new competition.

Mr. Flurry: No, Your Honor. That is out.

The Court: I understand it is not to be pursued further. I mean: You have finished with it, now?

Mr. Flurry: Yes, Your Honor.

The Court: I suppose this would be an appropriate time to stop for lunch.

Suppose I talk to you gentlemen just a minute before we take a recess.

We will recess until two o'clock.

(Whereupon, at 12:30 o'clock, p.m., a recess was taken until 2:00 o'clock, p.m. of the same day.)

[fol. 364] AFTERNOON SESSION

The Court: Proceed.

Mr. Kramer: If the Court please, in accordance with our conversation before we arose at the noon recess, the Government has decided to request permission to interrupt the testimony of John F. Tims, Jr., in order to put on those of the out-of-town witnesses who were subpoenaed for today, who find it inconvenient or impossible to remain over.

The Court: Very well.

Mr. Kramer: The first witness will be G. M. Philpott. Mr. Turnage will examine him, your Honor.

GORDON M. PHILPOTT, a witness for and on behalf of the Government, being first sworn, was examined and testified as follows:

Direct examination.

By Mr. Turnage:

Q. Will you please state your full name and home address?

A. Mr. Gordon M. Philpott, St. Louis, Missouri.

Q. What is your address, Mr. Philpott, in St. Louis?

A. 450 Sherwood Drive, Webster Groves.

Q. What is your occupation or business, Mr. Philpott?

A. I am Director of Advertising for the Ralston Bran Company and Vice-President.

Q. How long have you held the position of Director of Advertising?

[fol. 365] A. Since 1931.

Q. What positions did you hold prior to that time?

A. I have been a copy writer—all phases of different types of advertising. Advertising Manager and Director of Advertising.

Q. Does your Company place any general advertising in the newspapers in the City of New Orleans?

A. Yes, sir.

Q. Are you presently placing general advertising in the papers in New Orleans?

A. Yes, sir.

Q. What product do you advertise in New Orleans at the present time?

A. One product: Rice Chex, a cereal, a new cereal.

Q. Where is Rice Chex manufactured?

A. Battle Creek, Michigan.

Q. Through what states is Rice Chex distributed?

A. Pretty generally now through the Midwest, taking the southern section of the United States. It started in Wichita, Kansas, and it has gone up through the Midwest, and it is now being distributed up along the East Coast and ultimately the West Coast.

Q. Is Rice Chex being distributed in New Orleans?

A. It already has distribution in New Orleans.

Q. Can you state to the Court, Mr. Philpott, the value of newspaper advertising in the distribution of your product?

A. Are you speaking of that particular product or all [fol. 366] products?

Q. Well, take that particular product since that is the only one you say you are advertising now.

A. We spend more money currently in newspapers than any other medium.

Q. What daily New Orleans newspapers are you using in the advertisement of Rice Chex?

A. The Times-Picayune-States.

Q. Did you or did you not purchase this advertising in combination?

A. We did.

Q. When did you begin advertising Rice Chex in New Orleans?

A. I believe mid-December.

Q. Of what year, Sir?

A. Of 1950.

Q. Could you have purchased one newspaper without the other?

A. No.

Q. Now, you have stated that you are using for this Rice Chex advertising program the Times-Picayune morning and the New Orleans States afternoon exclusively?

A. Right, and Sunday.

Q. I was speaking of daily papers.

A. Yes, sir.

Q. Did the fact that you had to purchase these papers in [fol. 367] combination have any effect upon your selection of newspaper media in this City?

A. I would like to answer that with a qualification, if I may.

Q. If it had any effect, I will ask you what effect it had.

A. I might tell you that our advertising is purchased on the recommendation of—we buy a lot of advertising. The recommendation was made to me by a space buyer from our advertising agency. That recommendation was made to me and I approved it.

Q. Did the fact that you had to purchase the two papers in combination have any effect upon your approval of the recommendation?

A. No.

Q. Did you desire to purchase the New Orleans States?

Mr. Phelps: If the Court please, I believe the witness has already said that he approved the recommendation from an agency. I object to the question.

The Court: Overrule the objection.

Q. Did you desire to purchase the New Orleans States for the advertising of Rice Chex?

A. We desired, on this product, to purchase an evening paper, primarily. We desired circulation, so we bought where we could get the most circulation.

Q. My question was, did you desire the New Orleans States, and not specifically did you desire an afternoon paper?

A. Specifically, we desire first an afternoon paper for this type of product, an introduction.

[fol. 368] Q. Did you desire to purchase the Times-Picayune?

A. Well, again I must say that we approved the recommendation and we gave our agency a formula that we wanted evening papers. They came back with a recommendation for New Orleans of the unit purchase of the Picayune and the States, saying that we had to buy the two of them to get the circulation.

Q. Do you know of your own knowledge what these recommendations that you have mentioned were based upon?

A. Circulation in the area where we have distribution of the product, intended to get it. That is, city and trading zones, which is the common phraseology of the trade.

Q. Did you desire to purchase the New Orleans Item in connection with this Rice-Chex program?

A. Specifically, no, because the question was never brought to me in that form.

Q. What form was it brought to you in?

A. We give a certain pattern to our agency, and, as I said, we asked for evening papers, first, provided we could get circulation. New Orleans was recommended to us that we couldn't get the circulation we wanted because we couldn't buy two evening papers, so we buy the other two papers which we can buy together and get the circulation.

Q. Why could you not buy two evening papers?

A. Because you couldn't buy the States alone.

Q. Do I understand you to say, Mr. Philpott, that you took the morning paper in New Orleans, the Times-Picayune morning paper, because you could not buy two [fol. 369] afternoon papers here?

A. No. I would like to qualify that slightly. I said we had a standard formula which we give our agency that we would buy, first, evening papers. In New Orleans you have a situation where a morning paper has the most circulation, and where they have a rate, morning and evening, so the agency's recommendation came back that we do not follow our regular formula, that in New Orleans we take the Picayune-States and Sunday, which we did.

Mr. Turnage: If your Honor please, the Government would like to claim surprise in connection with this witness in that his present testimony contradicts the testimony which was given to the Government.

The Court: Very well. Lay the foundation.

Q. Mr. Philpott, do you remember having a conversation with relation to the matter which I am now questioning you on?

A. Yes, sir.

Q. With Mr. Tom Mitchell?

A. I believe that was his name.

Q. Do you recall what you told Mr. Mitchell?

A. Yes, sir, I believe so.

Q. Is that what you have stated on the stand?

A. I believe so, in addition to some other things.

Q. Did you tell Mr. Mitchell that you intended—that you had a budget figure of $8,000.00 to spend in the Rice Chex program?

A. I did.

[fol. 370] Mr. Wilson: I object to the form of the question. He hasn't denied it; he hasn't been asked if he had it. There is no use to cross-examine him on what he said to Mr. Mitchell.

Q. Did you tell Mr. Mitchell that you felt it was duplication between the Times-Picayune and the States, and that you did not want to buy the States?

Mr. Phelps: If the Court please, I object to the question. If you are going to say the man has made a contrary answer, at least, ask him about something he has already testified to.

Mr. Turnage: If your Honor please, the witness has testified that he desired the New Orleans States to advertise the Rice Chex program in the City of New Orleans: My question to him now is: did he tell Mr. Mitchell that he did not desire the New Orleans States.

The Court: That wasn't the question. I don't think you asked him that question. He said he wanted the New Orleans States and he said that ordinarily they wanted afternoon papers, but because of the situation here, the Times-

Picayune, having a larger circulation, was recommended to him, that he take the States and the Picayune, which he did.

Q. Did you tell Mr. Mitchell that you did not desire the States at the New Orleans market?

A. Not to my recollection.

Mr. Turnage: Your witness.

Mr. Phelps: We have no questions, your Honor.

(Witness excused.)

[fol. 371] Mr. Turnage: We will call Mr. Arthur Porter.

Arthur Porter, a witness called by and on behalf of the Government, being first sworn, was examined and testified as follows:

Direct examination.

By Mr. Turnage:

Q. Will you state your name for the record, please?

A. Arthur Porter.

Q. Where do you live, Mr. Porter?

A. Chicago.

Q. What is your home address?

A. My home address is in Park Ridge. My office address is 360 North Michigan, Chicago.

Q. What is your occupation, please?

A. I am the head of the Media Department of the Leo Burnett Company.

Q. Will you tell us what the Leo Burnett Company is?

A. Well, the Leo Burnett Company is an advertising agency.

Q. By advertising agency, do you imply that you represent advertisers in the selection of media?

A. That is right.

Q. Will you tell us what else you do as an advertising agency?

A. Well, our activities as an agency cover a wide range of things. We are engaged in market research and copy,

art work, production of the various types of advertisements which show up in all types of media, radio, television, [fol. 372] magazines, newspapers, outdoor advertising, and our activities reach into every phase of the advertising business.

Q. Does the Leo Burnett Company have more than one office?

A. We have one central office which is in Chicago. We have two other offices, one in Los Angeles and one in New York. They are very minor. We call them service offices. There is no creative work done in the other two offices.

Q. So that your principal office is in Chicago at the address you mentioned?

A. That is right, Sir.

Q. Will you explain, please, what your duties are with that Company, Mr. Porter?

A. Well, Sir, my duties as head of the Media Department involve the analysis of our clients' problems and recommendation to our clients as to the particular types of media to be used to carry their advertising messages. Further than that, the mechanical operation of my department involves the purchase of space and time which we use for our advertising.

Q. So that you operate in various media?

A. That is right.

Q. Are you familiar with the purchase of newspaper space in the New Orleans market?

A. Yes.

Q. Did you, for your Company, purchase space in the New Orleans newspaper market in 1949?

[fol. 373] A. Yes.

Q. Can you tell us, please, what newspapers you used in 1949?

A. May I consult my sheets on it?

Q. Certainly.

A. In 1949—would you like to have them by accounts?

Q. Yes, sir.

A. For Pillsbury we used the Times-Picayune Sunday, the Times-Picayune morning and the States in the evening. For the Sante Fe, we used the Times-Picayune in the morning, States in the evening, and the Item in the evening. For

Hoover Vacuum, we used the Times-Picayune on Sunday. For the American Meat Institute, we used the Times-Picayune, the States and the Item. That is all for 1949.

Q. Would you give us a little better description, please, of the account names? I think you used somewhat abbreviated names for those companies.

A. Well, the Pillsbury Mills, Inc.——

Q. Are manufacturers of flour?

A. Manufacturers of flour products.

Q. Located in the twin cities?

A. Located in the twin cities.

Q. And they ship their product into the New Orleans market?

A. That is right.

Q. And in your own agency you represent them in more than one of their products?

[fol. 374] A. We represent their entire group of products.

Q. They are mostly manufacturers of flour products?

A. Yes, from family flour to hot rolls to biscuit mix, picnics, Purina and feeds which are sold to agricultural areas. I think that is about all.

Q. And what was the next account, please, Sir?

A. Next is the Sante Fe Railroad.

Q. That is the Atchison, Topeka and Sante Fe?

A. That is right.

Q. And are its general offices in Topeka, Kansas?

A. Yes.

Q. And it is one of the well known railroads, is it?

A. Yes.

Q. It has no line into New Orleans, does it?

A. No.

Q. What was your next account, please, Sir?

A. The next was the Hoover Company, manufacturers of vacuum cleaners.

Q. Can you tell us, please, where their manufacturing plant is located?

A. In Canton, Ohio.

Q. Do they ship their products through normal trade channels into the New Orleans area?

A. Yes.

Q. And what is your next account?

[fol. 375] A. The next one is the American Meat Institute, which is a trade association of the meat packing industries.

Q. What is your next account, please, Sir?

A. I believe for 1949, that was all.

Q. That was your entire list?

A. Yes, sir.

Q. I wonder if you would please describe for us, Mr. Porter, the mechanics that you follow through after the media has been selected. What does the space buyer next do? Tell us what your own operation is.

A. Well, after the media has been selected, usual recommendation are made to the client. Our recommendations are made both in presentations and in advertising meetings, and they are made more formally on what we call an estimate, which is a form that records the amount of lineage to be used and the particular dates on which the advertising will run, which is submitted to the client for his signature. After the estimate has been approved by the client and returned to us, that is our authority for ordering the space from the newspaper, so we send the newspaper an order, a contract—usually our contracts are open contracts—and copy instructions are sent by our service department to the newspaper which provide for a specific insertion of a specific advertisement.

[fol. 376] By Mr. Leonard:

Q. Do you sometimes furnish the newspaper with mats?

A. Yes. The copy instructions usually are accompanied with the mats for the advertisements.

Q. Will you tell us what a mat is?

A. If I can. A mat is a—my knowledge of technical production is somewhat limited. A mat is a heavy paper article which is used by the newspaper to make a plate which is put on the press to print the ad.

Q. And the mat can be used. Is type metal poured on the mat to form the plate?

A. Yes, that is correct. Hot metal is poured on the mat to form the plate which is locked in the forms to put on the press to print the ad.

Q. But in your own company operation you forward the mats from Chicago to New Orleans?

A. That is right.

Q. Where you are required to supply mats.

A. That is right.

Q. Will you tell us in what manner you receive your payment for your own services?

A. Well, our own services are paid for by a deduction of fifteen per cent which is made by the media that we use. All agencies receive a uniform percentage of fifteen per cent, which the agency derives from the media, whether it be a newspaper or the radio network, or magazine.

[fol. 377] Q. Can you tell us how the billing is handled? Does the newspaper bill the client or does it bill you?

A. The newspaper bills us for 85 per cent of the total.

Q. And you, in turn, bill your client for the full amount?

A. For the entire amount; yes.

Q. And then checks are sent through the mail in settlement of those bills?

A. That is right.

Q. Directing your attention, if you please, Mr. Porter, to the calendar year 1950, can you tell us whether or not there was any change in your selection of newspapers in the New Orleans market for the account which you have mentioned?

A. Well, in 1949, for Pillsbury—Pillsbury Mills, Inc.—we used advertising in the Sunday Times-Picayune and States and the morning Times-Picayune. In 1950 our advertising, by far the greatest share of our advertising, appeared in the Sunday Times-Picayune and in the Sunday Item, with a somewhat smaller amount of advertising in the morning Times-Picayune, and, according to my records, we had one advertisement which appeared in both the morning edition and the evening edition and the evening edition of the Times-Picayune and States. I believe (I am not sure), that one of our contracts carried through this period.

For the Atchison, Topeka and Santa Fe, in 1949, we used the three daily newspapers in New Orleans, and in 1950 we used the morning and the evening editions of the New Orleans Times-Picayune and States, as well as the evening Item.

[fol. 378] For the Kellogg—no, we had no advertising for Kellogg in 1949.

For the Hoover Company, in 1950, we again used the

Sunday edition of the Times-Picayune, as we had previously in 1949.

For the American Meat Institute, our performance was comparable to that of 1949 in that we used both the morning Times-Picayune and the morning and evening combination of the Times-Picayune and States, as well as the States and the Item. I believe some of the figures here appear to be a little different because some of our contracts carried through for a year and in some cases we used the morning edition of the Times-Picayune and States and in another case we used both the morning and evening editions.

Q. Did you receive a notice from the Times-Picayune Publishing Company that effective February 1st, 1950 they would sell general advertising space only in forced combination?

A. I can't answer that. These notices do not necessarily come to me personally. I assume that such notice was received but I don't recall that I have seen it.

Q. You were informed, though, that your contracts that were in existence would be carried out?

A. My firm was aware of the fact; yes.

Q. You were aware of the imposition of the unit rate by the Times-Picayune and States?

A. Yes.

Mr. Phelps: If the Court please, I object to the word [fol. 379] "imposition." I think counsel may not intend any ill effect but I think he could use a better selection.

By Mr. Leonard:

Q. Mr. Porter, can you tell us whether or not your selection of media in the New Orleans market was affected by the adoption of the unit rate by the Times-Picayune Publishing Company, effective February 1st, 1950?

A. Yes, I believe it was, to a degree. I would like to say this: That I don't believe that the selection of media, at least in our particular agency the selection of media is not purely one that is based on costs or coverage. There are many intangible factors in selecting newspapers in which to run advertising. They have to do with the particular quality of the editorial product; they have to do with the con-

fidence of people in various cities have in particular newspapers which is evidenced by circulation. They have to do with particular services that the newspapers provide national advertisers with in implementing the advertising at the trade level, and I would have to say that our decision of media was affected after it became necessary to use both the morning and evening editions of the Times-Picayune. I don't believe it was materially affected. I think there was an effect.

Q. Can you tell us what the effect was, please?

A. I think the effect was, perhaps, at least in our thinking, whether it has been demonstrated yet or not, I think the effect was probably a somewhat greater concentration of our advertising in the Times-Picayune and States, which we have historically selected as our number one newspaper [fol. 380] in New Orleans. One of the reasons would be because of the great predominance of the circulation of the morning Times-Picayune.

Q. You have regarded that as the—the morning Times-Picayune as the number one paper in this market?

A. Yes.

Q. And for a good number of years?

A. Surely.

Q. How long have you been in the advertising business, Mr. Porter?

A. Well, I have been in the advertising agency business for five years. I have been in some phase of the advertising or the research business for about fifteen years.

Q. May I see your document?

A. (Document handed to counsel.) Surely.

Mr. Leonard: (Having examined document) No further questions of this witness, Your Honor.

Cross examination.

By Mr. Phelps:

Q. Mr. Porter, taking up the four accounts that you mentioned, according to my information on the Pillsbury account, the Item in 1949 carried no lineage at all. In 1950 it carried 9,700 lines in the American Weekly. Does that check with your information?

A. I haven't figured out the lineage. In 1950, in the Item, according to my information here, there were eight three-fifths pages in full color, four half pages and two full pages in the American Weekly.

[fol. 381] Q. In 1949, the Item carried no advertising for Pillsbury, did they?

A. No. I might expain this: That as an agency we believe very much in the use of color advertising and by far the preponderance of our advertising is in Sunday newspapers in full color.

Q. I see. Thank you.

A. Coming to the American Meat Institute, according to my information based on Media Records the Item carried 975 lines week-day in 1949, and 2,935 lines week-day in 1950. Does that check with your information?

A. Within a few lines; yes.

Q. According to my information on Atchison, Topeka & Santa Fe, the Times-Picayune-States and Item, all carried lineage in 1949, approximately 800 lines being run in the combination, approximately 432 lines being run in the Item. It that correct, approximately?

A. No. I think according to my figures (and there will be a difference because of the way Media Records measures advertisements),—according to our records, we had just under a thousand lines in the Times-Picayune morning and the States evening and in the Item. They were practically the same.

Q. And in 1950 you also carried equal schedules in the Times-Picayune, States and Item. Is that correct?

A. Yes.

Q. On the Kellogg account, according to my information, the Item carried no lineage week-day or Sunday in 1949, and gained a total of 5,326 lines in 1950. Does that check [fol. 382] approximately with your information?

A. Yes.

Q. Are you familiar with the account of Mars, Inc.? Do you have any reference to that in your notes?

A. I do not have it here; no. We are the agency for the Mars Candy Company.

Q. According to my information, in 1949, Mars, Inc., car-

ried 2,000 lines in the Times-Picayune, morning, and nothing else.

A. We were not the agency for Mars in 1949. I don't recall the exact date that we were retained by Mars as their agency, but very probably that was before the time we began to work with them.

Q. Do you have any information on the Blue-Jay account, which I think is Bauer & Black?

A. Yes.

Q. According to my information, in 1949, you carried equal schedules in the Times-Picayune and States of approximately 1,000 lines—I beg your pardon;—in the Times-Picayune and the Item, of approximately 1,000 lines each. Is that approximately correct?

A. I do not have that because in 1949 we were not the Blue-Jay agency. We acquired that account in 1950.

Q. In 1950 you ran equal schedules in the Times-Picayune, States, and Item. Is that not correct?

A. I believe so.

Q. You also ran schedules in both Item Sunday and Times-Picayune Sunday?

[fol. 383] A. That is right. And the locally edited Sunday Rotogravure magazine.

Mr. Phelps: If the Court please, we have no further examination of Mr. Porter.

(Witness excused.)

Alvin E. Freifield, a witness called by and on behalf of the Government, being first sworn, was examined and testified as follows:

Direct examination.

By Mr. Leonard:

Q. Will you state your name for the record, please?

A. Alvin E. Freifield.

Q. What is your home address, please?

A. 1526 Birchwood Avenue, Chicago.

Q. By whom are you employed, please, Mr. Freifield?

MICRO
TRADE

CARD
MARK ®

2,843

MATTHEW BENDER & COMPANY
MB

53

A. Foote, Cone & Belding.

Q. Can you tell us what business they are in, please?

A. They are an advertising agency.

Q. And where is your office located?

A. Our Chicago office is located at 155 East Superior Street.

Q. What are your duties with Foote, Cone & Belding?

A. I am a space buyer.

Q. And will you tell us what a space buyer does?

[fol. 384] A. A space buyer will make recommendations on media to use, schedules, costs, and so on.

Q. For clients who wish to use either national or——

A. For clients; that is right.

Q. You don't represent local advertisers?

A. We do not represent local advertisers; no.

Q. Mostly general advertisers?

A. General and national advertisers.

Q. Does your company have more than one office?

A. Yes. We have one in New York, Los Angeles, San Francisco, Houston, and offices in England.

Q. I hand you a document which has been marked Government Exhibit No. 100 and ask you if you will kindly look at that.

A. Yes. I read it.

Q. Do you recall writing that letter, Mr. Freifield?

A. Yes, sir.

Mr. Leonard: We offer in evidence, if the Court please, the document which has been numbered Government Exhibit 100.

The Court: It will be admitted.

(The document marked "G-100" for identification was received in evidence.)

Q. Will you relate the circumstances which lead to your writing this letter, please.

A. We received an announcement on November 30, as I recall, 1949. I don't recall if the announcement was from—

[fol. 385] I think it was from the representatives of the New Orleans Times-Picayune and the States, Jann & Kelley. The announcement was dated November 30th, I

think, of 1949; or, it could have been Dated December 1st, but we received it on November 30th. If I recall the announcement, it stated that effective February 1st, 1950, the Times-Picayune and the States would be sold on a forced combination basis, but that existing contracts, or contracts that existed prior to December 1st, would be honored until their expiration. As we received the announcement on November 30th, I instructed the people in our department to issue superseding contracts as of November 30th to assure our Chicago office clients maximum rate protection and the privilege of using either paper for as long a period of time as possible for all of our accounts. I felt that technically we could get under the wire and give our clients an additional protection. I did that because I did not consider it exactly fair for clients who had contracts in force, expiring, let us say, February 2nd or March 1st, of 1950, whereas other advertisers could have had contracts expiring technically November 30th, 1950.

The contracts were issued and sent over to the Chicago representative. They were returned; they were rejected. I wrote that letter as a result of that: simply to go on record that we thought that our clients should have had that protection. It is one of our duties to get the best rates possible, the most equitable rates for our clients for as long a period of time as we can.

Q. Mr. Freifield, I invite your attention to a document which has been received in evidence as Government Exhibit [fol. 386] 33, and will ask if the announcement which you received in Chicago was not in that form?

A. Yes, sir; it looks like it.

Q. This is a photstatic copy.

A. It looks like it. I am not exactly sure, but it looks like it. Yes.

Q. I invite your attention, if you please, Mr. Freifield, to a document in evidence as Government Exhibit 35.

A. This is the first time I have seen this letter.

Mr. Phelps: Excuse me; may I see that? (Document examined by counsel.)

...

A. I would like to correct this: I don't recall seeing this letter. This was written by Mr. Spiegel, who is the Media

Director in our New York Office. Each office operates independently, as our Media Department. We collaborate occasionally on general media information, but we operate independently.

Q. Referring to the rate change introduced by the announcement of The Times-Picayune Publishing Company, issued December 1st, 1949, and the rate changes to become effective February 1st, 1950, can you tell us whether or not your choice of a selection of a media in New Orleans was affected thereby?

A. Generally, that would depend upon the account, but on some accounts, yes.

Q. And can you tell us what those accounts are?

A. No. I can talk in general terms: probably a food account. There, in my opinion, the Item is the second news- [fol. 387] paper. That is indicated, and it is one way we do judge, or try to judge, the selling power of a newspaper, by the lineage records, and although the Times-Picayune is no doubt the first paper, or the first-choice paper, in my opinion the Item is the second-choice paper.

Q. What would you say was the third paper in your ranking?

A. In food, I would rank the States the third paper.

Q. Can you tell us whether or not your choice of media in New Orleans was restricted by the change in the method of selling the Times-Picayune and States, which I have just referred to?

A. Restricted to the extent that possibly, after buying both the Times-Picayune and the States, there could be cases where there would not be either money enough or we would have sufficient coverage to pass by any further additions of newspapers to the list. It is a possibility.

Q. Can you mention any other products which might be similar to food in preferring afternoon circulation?

A. I don't follow you in "preferring afternoon circulation."

Q. Or preferring the Item over the States?

A. Possibly your drug products. That is just my opinion. It all would depend, of course, upon the circumstances, too, because the Times-Picayune and the States happen to be a very good buy from the circulation standpoint, cover-

age standpoint, milline rates, but sometimes we don't always buy on the basis of circulation.

Q. What are the other factors, Mr. Freifield?

A. Well, in addition to rates and circulation, the co-
[fol. 388] operativeness of a paper, if that is the word for it; a general knowledge of the publication, its editorial columns, its food pages, and this, of course, refers to co-operation: its willingness to cooperate with a national advertiser to the extent of soliciting tie-ins. At times we like to have two newspaper properties working for us or working for a specific account instead of one. There are a number of factors, some of them intangible; some of them, why, we just use our own judgment.

Q. Does the Foote, Cone & Belding Agency represent Anihist?

A. That is handled out of New York.

Q. You had no personal——

A. None at all.

Q. ——connection with the placement of the Anihist account?

A. As a matter of fact, I am a space buyer on three accounts.

Q. What are those, please?

A. Armour, Frigidaire, and Delco: Delco Appliance Division.

Q. Can you tell us whether or not the combination rate adopted by the Times-Picayune Publishing Company and put into effect February 1st, 1950 affected you in the choice of lineage for any of those three accounts?

A. Delco is not using newspapers currently. Frigidaire is using Sunday papers right now: their factory schedules. Armour does use space in New Orleans. I did not bring my records—any records. I was not requested to bring any. But in 1950 Armour used all three papers. I believe in 1949 they used the Times-Picayune and the Item.

Q. Can you tell us about 1951, for Armour & Company?
[fol. 389] A. We are just——

Mr. Phelps: If the Court please, I think that is going to raise an issue which may recur throughout this type of testimony, which is whether the week-end edition of the Item Company is to be classed with its six-day lineage,

or whether it is to be separated from its six-day lineage. I don't know whether counsel proposes to get into that, but if we are going into the '51 figures I think, necessarily, we will have to make it clear whether the witness or counsel is referring to the five-day figures of the five-day plus the Saturday-Sunday figures. I might add that it is our basic position that the '51 figures are relatively insignificant in view of that particular change-over.

By Mr. Leonard:

Q. Can you tell us about the Armour account in '51, Mr. Freifield?

A. We are in the Sunday Times-Picayune.

Q. And no other?

A. Not thus far, in 1951; to the best of my recollection. I brought no records with me. But I believe you have the records here; or must have: media records and figures. It is a matter of public information.

Q. Can you tell us, please, Mr. Freifield, why you used all three papers in the calendar year 1949 and cut it to two papers in 1950 for Armour & Company.

A. I don't exactly recall the circumstances why we used three papers in 1950, because each year varies, depending upon the objectives of a specific campaign. Possibly, in [fol. 390] 1950 it was our desire to use three papers.

The Court: Did you use all three in '50?

A. Yes, sir: during a period of 1950 I think; if I recall correctly.

[fol. 391] Mr. Leonard: We offer in evidence, if the Court please, Government Exhibit 100.

The Court: It may be admitted.

(The document referred to, marked G-100 for identification, was received in evidence.)

By Mr. Leonard:

Q. This is the letter which you testified, Mr. Freifield, that you wrote on November 30, 1949:

(Mr. Leonard read the above-mentioned letter.)

By Mr. Leonard:

Q. I wonder if you will tell us, please, Mr. Freifield, why you use the expression: "We, of course, regret your publisher's decision"?

A. Well, I have been in media work for over twenty years and have always, let's say, lived with combinations. They have always existed; and, as each year passes, we do get announcements that more and more papers are either merging or enforcing the use of two papers.

Mr. Phelps: If the Court please, I thought the Government's intention was not to go into the question of what had happened in other communities. If it is, I would like to know if the Government intends to change its attitude in that regard; otherwise, I suggest that this matter be stricken from the record.

The Court: I think the answer is responsive.

I overrule the objection.

A. As our choice of papers was taken away from us, it is [fol. 392] something that I, personally, regret.

By Mr. Leonard:

Q. And you mean that your choice of advertising media is interfered with and restricted by the use of a forced combination rate?

A. Yes.

Mr. Leonard: No further questions, Your Honor.

Mr. Phelps: If the Court please, I wonder if we could have an intermission now. We would like to have a conference.

The Court: About how much time do you want?

Mr. Phelps: I think, probably, fifteen minutes, if that is not objectionable.

Mr. Leonard: We have no objection.

The Court: We will stand recessed for fifteen minutes.

(Recess.)

Cross examination.

By Mr. Phelps:

Q. Mr. Freifield, what is the milline rate? What does that mean?

A. The milline rate simply is the rate per line, if the publication had a million circulation.

Q. That is the basic standard, I believe you testified, by which space buyers purchase newspaper advertising?

A. No, sir. They don't purchase it on a milline rate. It is one basis they use to compare the cost of the circulation on a quantitative basis.

[fol. 393] The Court: I don't understand what that means: what the rate would be if the paper had a million circulation.

The Witness: Yes.

The Court: You mean, if they had 500,000 circulation and the rate is $1 a line——

The Witness: The milline would be $2.

By Mr. Phelps:

Q. Mr. Freifield, you are with Foote, Cone & Belding?

A. Yes, sir.

Q. Where does that agency office?

A. New York, Chicago, Los Angeles. There is a branch in Hollywood. Houston. I said, San Franciso, Los Angeles, Houston. I believe they have some offices in London, England.

Q. How many advertising clients does your firm represent?

A. I can't recall, offhand, but here is a list of them (indicating). I believe it is an up-to-date list, but I have had it in my desk for a while. It could have changed slightly.

Mr. Phelps: I would like to mark this for indentification Defendant 3. I believe we have two Defendant ones, if the Court please. I think Mr. Wilson offered Defendant 1; whereas, in connection with the deposition, we also had a Defendant 1.

Mr. Flurry: It is in the Answer.

Mr. Phelps: It is annexed to the Answer. Thank you, Mr. Flurry.

(The document referred to was Marked Defendant's 3 [fol. 394] for identification.)

By Mr. Phelps:

Q. This list which I have marked Defendant's 3 you identified as a list of the clients of Foote, Cone & Belding.

A. In the United States. I can't vouch for the accuracy of it. I have had it in my desk for a while. A complete list, you will find in McKittrick's Directory and other directories.

Q. You are sure it is substantially correct?

A. Yes, for the United States.

Q. I have a copy of the Agency List, Standard Advertising Register. I don't see any necessity for verifying it, though. I am perfectly willing to accept it.

Mr. Phelps: I offer this in evidence as Defendant's 3.

The Court: It will be admitted.

(The document referred to, marked Defendant's 3 for identification, was received in evidence.)

By Mr. Phelps:

Q. How many officers are there in your Chicago office?

A. We have one office and one printing plant.

Q. I say: How many officers are there?

A. Officers?

Q. That is correct.

A. I am afraid I can't answer that. I don't recall. That is a matter of record.

[fol. 395] Q. I would like to show you a copy of an Agency List, Standard Advertising Register, and ask you if this will refresh your recollection.

(Document handed to the witness.)

A. I would say that is substantially correct.

Q. Would you read that list into the record, please. This is only your Chicago office.

A. Chicago Office: Fairfax M. Cone, Chairman of the Board; J. H. E. Davis, Executive Vice President; Roy

Campbell, Jr., Vice President; Robert J. Koretz, Vice President; Rolland W. Taylor, Vice President; David W. Lockwood, Vice President and Art Director; Harold H. Webber, Vice President in Charge of Media and Research." He is my boss. "H. R. VanGunten, Vice President and Media Director; John J. Lechner, Vice President in Charge of Outdoor Advertising; George Heiland, Vice President and Production Director; Richard W. Tulley, Vice President and Research Director." Mr. Tulley is now in the service. "A. J. Bremmer, Vice President; John V. Hunt, Vice President; Leo H. Rosenberg, Vice President; Milton H. Schwartz, Vice President; S. L. Williams, Vice President; William K. Ziegfeld, Vice President." He is no longer with our organization. He resigned. "William R. Sachse, Vice President and Treasurer; Joseph W. King, Secretary and Assistant Treasurer; Gordon Buck, Executive Assistant." Mr. Buck left our organization recently. "Leah Anderson, Educational Director; Robert Hussey, Manager of Media Department; Harry Dieter, Radio and TV Business Manager; Richard L. Davis, Radio and TV Production Manager; Genevieve Lemper, Radio and TV Time Buyer."

[fol. 396] Q. Thank you, sir.

The Armour Company, which you represent, has quite a number of products, doesn't it?

A. Yes, sir.

Q. Are you familiar with the Perk soap account?

A. Somewhat.

Q. This is an Armour account?

A. It is an Armour account.

Q. Is that one of your accounts?

A. One of our accounts.

Q. I mean you, yourself?

A. I handle it now, yes.

Q. I notice that account, according to media records, used about 14,000 lines in the Item in 1949.

A. Yes.

Q. According to media records, they only used 1200 in 1950?

A. Yes.

Q. Also, according to media records, in 1949 they used 12,600 lines in the Times-Picayune?

A. Yes, sir.

Q. In 1950, in the Times-Picayune, they used about 1200 lines; so that the Item lost approximately 10,000 lines of general advertising in 1950 in comparison with 1949? Isn't that correct?

A. Substantially, yes.

[fol. 397] Q. It is a fact that that had nothing to do with the combination rate, isn't it?

A. Nothing at all.

Q. To what do you attribute that 10,000-line loss in the Item?

A. Well, Perk Soap curtailed their advertising, if I recall, early in 1950.

Q. As a matter of fact, you have run new advertising since the unit rate went in, approximately? Isn't that correct? In New Orleans?

A. That is correct.

Are you referring to Perk Soap?

Q. Yes.

A. Yes. You are right.

[fol. 398] Q. Are you familiar with the Star Meat Products account of Armour?

A. Somewhat, from my standpoint.

Q. That is under your buying jurisdiction?

A. Currently, yes.

Q. According to my information, that account ran no lineage at all in the Item in 1948 and 1949. Is that in accordance with your recollection?

A. In accordance with my recollection, you are right, I believe.

Q. According to my information, in 1950, the Item registered a gain of 9383 lines on the Star Meat Products account.

A. 1950?

Q. Yes, sir, 1950.

A. That is approximately correct. I think that is correct, using my memory.

Q. That was a gain of 9300 lines, fifty over forty-nine?

A. Yes, sir.

Q. Dial soap is one of Armour's accounts also, isn't it?

A. Yes, sir.

Q. That account, according to my information, didn't use the Item at all in 1949. Is that correct?

A. Yes, sir. They are in Sunday papers.

Q. They used the Sunday Item in '49?

A. No, sir. I think either in 1949 or 1950—I think they [fol. 399] used it for one issue.

Q. Other than that, they have never used the Item in '48 or '49?

A. To the best of my recollection, they have not.

Q. The heavy schedule is in the Sunday Times-Picayune?

A. Yes, sir.

Q. And they have run very heavy schedules there?

A. Yes, sir.

Q. And a negligible amount in any daily editions?

A. That is right.

Q. Verdigre Fertilizer, is that one of your accounts?

A. We don't handle it. It is handled by an agency in Atlanta, Georgia. I believe it is Liller, Naff, Battle.

Q. Armour Lard Company, is that one of your accounts?

A. Yes, sir.

Q. According to my information, they used about 6400 lines in the morning Times-Picayune in 1948, nothing in any of the other editions and have used nothing since.

A. I don't recall that schedule. That is too far back for my recollection.

Q. You have no recollection of their using newspaper space in New Orleans in 1949 and '50?

A. No, sir.

Q. Dash Dog Food, is that one of your accounts?

A. Yes, sir.

[fol. 400] How do they buy?

A. Dash Dog Food has bought in the past a promotional advertisement in the Sunday comics. I don't think they did it this year.

Q. I don't suppose that is in the category of the food and drug accounts that you refer to?

A. It is in the category of a food account.

Q. Referring to Government Exhibit 100, which is a letter you wrote to Mr. Jann, it is my understanding that you were protesting in that letter against the refusal to give what you called "old customers" the same break as people who didn't have contracts. Isn't that correct?

A. Or people who placed contracts shortly before December 1, 1949, yes, sir.

Q. And that is what your letter is directed to, is that correct?

A. Yes, sir.

Q. Do you recall whether Armour, in fact, got some slight adjustment because of budget plans pursuant to your letter?

A. Yes, I recall that.

Q. Your letter was successful then in achieving to some extent the purpose that you had in mind?

A. To some extent. I was given to understand by Henry Jann that any schedule figured prior to the announcement would be honored.

Q. Coming back to the milline rate, could you tell the Court generally, in view of your considerable experience, what has happened to milline rate in the past fifteen or twenty years?

[fol. 401] A. Milline rate during the past fifteen years have gone slightly higher, not too high. Papers on the whole have maintained their milline rates very well. Their rates have gone up, but so have their circulations. So, generally speaking, millines have been fairly constant.

Q. In other words, substantially, your milline rate is the same today as it was ten years ago?

A. Substantially. Slightly higher.

Q. But in itself, it is in fact a negligible degree?

A. That is right.

Q. As a matter of fact, that varies from one part of the country to the other, doesn't it?

A. Yes, sir.

Q. And with circulations?

A. It varies with circulations and editions.

Mr. Leonard: We object to that and move to strike the last two questions and answers on the ground that it is beyond the scope of the examination and is irrelevant in this case to find out what the milline rate would be in other newspapers or other cities. We have no objection, if the witness knows, to any testimony concerning the milline rates in this city.

Mr. Phelps: If your Honor please, the Court permitted

testimony as to reasons why the witness seemed to have some objection to combinations in other cities, and this testimony is designed to show that the factors that the witness objects to has not, in fact, in any way prejudiced the [fol. 402] advertiser.

The Court: I overrule the objection.

A. As a rule—I have a study right here which has been prepared to show that in most cases your average milline rate for morning papers are slightly less than evening papers, but also varies by papers.

Q. Does it indicate what the increase has been in the last ten years, if any?

A. No sir. You will find that in Editors and Publishers International Year Book.

Q. Thank you, Sir. You are well aware of the fact that the publishers' costs have increased tremendously in that comparable ten year period, haven't they?

A. Very much so.

Q. So that, apropos of your possible criticisms, it is a fact that although the publishers' costs have increased tremendously the advertiser is still getting his advertising for approximately the some cost that he got it for approximately ten years ago, isn't that correct?

A. It depends upon how you look at it. He pays more now, his rates are higher, but he gets a comparable amount of circulation.

Q. For the number of readers reached, he can reach the same number of readers, observers, for approximately the same cost, isn't that correct?

A. Yes, substantially.

Q. One of the reasons that you listed for preferring one paper over the other was—strike that question, please. [fol. 403] What is meant by the term "merchandising cooperation", Mr. Freifield?

A. Merchandising cooperation is a means of increasing dealer support in connection with a specific advertising campaign. That is my definition in connection with newspaper advertising. That is one form of it.

Q. In other words, it is editorial promotion?

A. It could be editorial promotion; it could be direct dealer promotion, tieing in with a campaign.

Q. What about broadsides, does that fall within the same category?

A. Broadsides could be a form of merchandising cooperation.

Q. Mr. Freifield, do you know what the milline rate is for the morning and evening editions of the Times-Picayune Publishing Company?

A. I would have to refer to some notes I have made, and I think I could tell it to you.

Q. Would you please, Sir?

A. It is about $2.18. That is the open one, your maximum milline rate. That is without any volume discount.

Q. What is the lowest milline rate offered?

A. I don't recall. I only have the open milline rate here. It would probably be down below $2.00.

Q. Do you know what the milline rate is on the New Orleans Item?

A. $2.90, graduating downward. It would go downward [fol. 404] depending upon volume.

Mr. Phelps: We have no further cross-examination.

Mr. Leonard: No further questions.

OLIVER EINSTEIN, called as a witness by and on behalf of the Government, being first sworn, was examined and testified as follows:

Direct examination.

By Mr. Rashid:

Q. Would you state your full name?

A. Oliver Einstein.

Q. Where do you reside?

A. New York City.

Q. Could you give us an address?

A. 19 East 65th Street.

Q. By whom are you now employed?

A. Federal Advertising Agency.

Q. How long have you been employed by that agency?

A. I have been there four years.

Q. What position do you presently hold with that agency?

A. I am the Space Buyer on the Cream of Kentucky account, and I am assistant to the Account Executive.

Q. Could you tell us what type of an organization the Federal Advertising Agency is?

A. It is a general advertising agency.

Q. Are you the individual in the agency who is responsi- [fol. 405] ble for the purchasing of advertising space on Cream of Kentucky products?

A. Yes, sir. Well, I am responsible for the selection—of course, we have a media director who has the final say.

Q. But you actually handle the account for the purchase of space and the insertion of advertising space?

A. Yes, sir.

Q. Could you tell us where Cream of Kentucky is produced, in what state?

A. In Kentucky.

Q. Could you tell us where it is sold in this country?

A. It is sold nationally.

Q. By nationally, do you mean throughout the United States?

A. Yes, where it is legal.

Q. Can you tell us, Mr. Einstein, of what value, if any, is newspaper advertising in the City of New Orleans in developing a market for Cream of Kentucky?

A. Of what value?

Q. Of what value is newspaper advertising in developing a market for that product?

A. The newspapers are the medium by which we reach the consumer. Cream of Kentucky is an account that uses local advertising rather than magazines. We use either newspapers or outdoors.

Q. Could you tell the Court what newspaper or newspapers you were using for Cream of Kentucky advertising in the City of New Orleans for the year 1949?

[fol. 406] A. We were in the Times-Picayune and we were in the Item.

Q. Could you tell the Court what newspaper or newspapers you are using at the present time in the City of New Orleans for Cream of Kentucky advertising?

A. Well, at the present time we are not advertising at all. We just stopped about two weeks ago.

Q. Prior to the time that you stopped advertising in the City of New Orleans, what newspaper or newspapers were you using for that advertising?

A. Using the Times-Picayune and the States.

Q. Could you tell the Court approximately when you discontinued the use of the Item for that advertising?

A. It was last August when the Schenley contract expired with the Times-Picayune and States.

Q. Could you give us the particular reason or reasons that occassioned the discontinuance of the Item newspaper for Cream of Kentucky advertising?

A. Well, as I say, we were buying the Times-Picayune and the Item. We were limited to a budget in New Orleans, and when our contract expired, we were subject to using the forced combination and we just didn't—our money went so far——

Q. Could you tell us then, Mr. Einstein, in your own words, what effect, if any, has the fact that your new contract with the Times-Picayune Publishing Company required you to purchase both the Times-Picayune and the States had upon your advertising pattern in the City of [fol. 407] New Orleans?

Mr. Phelps: If the Court please, I don't know that there is any testimony about a new contract. I think counsel can rephrase the question though and get the information he wants.

Q. Mr. Einstein, you have testified that your contract expired with the Times-Picayune Publishing Company in August of last year, is that right?

A. Well, it wasn't on Schenley. The agency does not issue contracts for them. Schenley issues their own contracts and we get a copy.

Q. Have you seen the contract?

A. Yes, sir.

Q. Do you know of your own knowledge when it expired, approximately?

A. It was in August of 1950.

Q. Do you know whether or not, after the expiration of

that contract; a new contract was signed with the Times-Picayune Publishing Company for newspaper advertising?

A. Yes, sir.

Q. Could you tell us now, Mr. Einstein, what effect, if any, the fact that your new contract with the Times-Picayune Publishing Company required you to purchase both the Times-Picayune and the States has had upon your advertising pattern in the City of New Orleans?

A. Well, as I said when the forced combination went into effect, the rate for the Times-Picayune and the States, [fol. 408] while not as high as the rate, the combined rate for the Times-Picayune and the Item, it was sufficiently high that we could not afford to keep on advertising in the Item, and, therefore, we dropped it.

Mr. Rashid: No further questions.

Cross-examination.

By Mr. Phelps:

Q. Mr. Einstein, what other brand does Schenley sell besides Cream of Kentucky?

A. Oh, they have a great many brands. In New Orleans here, I have seen—well; let me put it this way: Schenley is divided into two units. One part is Melrose and one part is Schenley and each of those have their own brands. The parent company is Schenley Industries.

Q. What I am trying to get at is Schenley Cream of Kentucky is one of approximately how many brands that Schenley produces?

A. I should say—I really can't tell you. There are at least twenty.

Q. That is good enough. Don't answer this question unless you know the answer. If you can, I would like you to. Do you happen to know whether any of those other accounts are using the Item today in New Orleans?

A. No, I don't.

Q. You don't know?

A. I don't know.

Q. The particular problem that you had with Cream of Kentucky, you felt that the best buy was the unit combina- [fol. 409] tion rate, is that correct?

A. Do you mean after that was put into effect?

Q. After it went into effect.

A. Well, of course, since this is all an opinion, we felt that the Times—we wanted to be in the Times-Picayune, and if we had to take the States, that was all we could do.

Q. Well, of the buys that were offered to you, you felt that was the best buy that was offered?

A. Yes.

Mr. Phelps: We have no further questions.

Mr. Rashid: No further questions.

(Witness excused.)

Mr. Flurry: We will call Mr. Tims back to the stand now.

JOHN F. TIMS, JR., resumed the witness stand and testified further as follows:

Cross-examination (Continued)

Mr. Flurry: Before going into other matters, I would like to offer in evidence Government Exhibit 98 which has already been identified.

The Court: What is Government Exhibit 98?

Mr. Flurry: It is a letter from Mr. Tims to Joseph Traxler.

The Court: Dated January thirteenth?

Mr. Flurry: Yes, your Honor.

[fol. 410] The Court: It is admitted.

(The document marked "G 98" for identification, was received in evidence.)

By Mr. Flurry:

Q. Mr. Tims, does that letter refer to your local display rates?

A. Retail display rates.

Q. I mean your retail display rates. In other words, that isn't national or general advertising?

A. No, sir.

Q. Mr. Tims, do you recall whether or not, in March,

1950, the company increased the rate on local display advertising in the Times-Picayune?

A. Did the Times-Picayune Publishing Company increase the rate on the morning edition and on the Sunday edition, is that your question?

Q. Yes.

A. Yes, we did.

Q. Were similar increases applicable to the States?

A. We did not increase the retail rate of the States at that time. Since then we have as of March the first, 1951, blanket rate from four cents to a minimum of a cent and one-half.

Q. Why did you increase the rates in the Times-Picayune morning and Sunday and did not increase the rates in the States correspondingly?

[fol. 411] A. We didn't think it was necessary with the increase in the Times-Picayune. We had no increase in newsprint at that time and we felt that was about all the traffic could stand, and naturally we were very concerned in not trying to price ourselves out of business.

Q. At that time, was the Times-Picayune morning and Sunday making a greater profit than the operations of the States?

A. Well, I told you this morning I looked at that net picture.

Q. I show you Government Exhibit 6, Government Exhibit 7, and Government Exhibit 8, and ask you if you can identify those documents.

A. Government Exhibit 6 reported examination of the year ending December 31, 1947, for the Times-Picayune Publishing Company as prepared by Haskins & Sells. Exhibit 7, there is a notation on the top of Mr. Heinz—the Times-Picayune Publishing Company report on examination for the year ending December 31, 1948, prepared by Haskins & Sells; Times-Picayune Publishing Company report on examination for the year ending December 31, 1949, as compiled by Haskins & Sells.

The Court: "G-8" is the last one?

Mr. Flurry: Yes, your Honor. These were attached to the depositions and they are the numbers we referred to

in the beginning. We offer in evidence Government Exhibits 6, 7 and 8, just identified by the witness.

Mr. Wilson: Well, Mr. Flurry, aren't those just duplicates of those you have in those red folders there? I don't [fol. 412] see any need of having anything in there twice. This record will have to be printed sometime probably.

The Court: They are hardly duplicates. They may contain the same information.

Mr. Leonard: If the Court please, I think Mr. Wilson is misinformed. As I understand, the company supplied us with their own monthly figures, and these Haskins & Sells figures, I believe, are in different form.

Mr. Wilson: If there is going to be a question about it, I will withdraw the objection.

Mr. Flurry: Your Honor, the exhibits offered, make a very distinct showing from the photostats included in the FBI folders because they show the manner in which the records have been set up with respect to the different papers.

The Court: They will be admitted.

(The documents marked "G-6", "G-7" and "G-8" for identification, were received in evidence.)

Q. I will ask you to refer to the profit and loss showing in these three exhibits, Mr. Tims, and state to the Court what the net profits were in the Times-Picayune morning and Sunday and the States for each of those years.

A. You don't want the consolidated sheets?

Q. No, I just want the net profit.

A. This shows $2,673,953.73. That is before taxes, I am sure.

[fol. 413] Q. Is that for the Times-Picayune?

A. The report says "The Times-Picayune Publishing Company, Statement of Profit of Operations before General and Administrative Expenses for the Year ending December 31, 1947 and 1946 in Comparison".

Q. Now is the figure which you have just read under the column headed "The Times-Picayune"?

A. It is.

Q. Did you read the figure for the New Orleans States?

A. No, sir, I haven't, I will read it. $476,068.61.

Q. That was for the year 1947?

A. Yes, sir, 1947.

The Court: That is before general and administrative expenses?

The Witness: The report says so.

Q. I now will ask you to read similar figures from your report for 1947—I beg your pardon, 1948.

A. This is for the year 1948, under the caption "The Times-Picayune", $2,698,639.19, and under the New Orleans States, $327,521.40. Times-Picayune $3,026,556.64, States, $247,836.68.

Q. That was for the year 1949?

A. That is correct.

Q. Now, at the time you were increasing the rates in the Times-Picayune morning and Sunday in 1950, and leaving the States' rate the same, your profit was going down in the States, was it not, and increasing in the Times-
[fol. 414] Picayune?

A. If I had the figures before me now, I could answer that, but I have just related them. I can't remember now what they were in '47, '48 and 1949. I have just testified to them.

Q. Was it the policy of the company to take what the traffic would bear and where it would bear it?

A. Well, I don't know if you would put it that way. We had not received an audit report of the net paid circulations of all of the newspapers for 1949 when that rate card was put into effect on March first of 1950. The States was not making proportionate gains in circulation as the morning paper was, and we waited until that report came in. Then we got the shock of an increase of $6.00 a ton on newsprint on November first of 1950. Then the States' rates were increased on March the first of 1951, going from four cents in the retail field in the open bracket down—on a hundred thousand lines—down to two cents and on a million to a cent and one-half.

Q. Wasn't increases in your costs taking place about 1950?

A. We had no increase in news print cost until the start of 1950.

Q. Did you have any increase in labor cost?

A. We have that every day, I guess, somebody getting a raise or wants a raise.

Q. Do you recall any other rates that were raised other than the retail rates?

A. As I recall, we raised our classified rates on March the [fol. 415] first.

Q. Did you raise that in the morning, Sunday and afternoon?

A. Yes, sir. Well, we saw it as a unit, morning and evening, yes.

Q. Did you have any increase in your unit combination rates over what it had been theretofore on general advertising?

A. No. We did—I think we took a slight increase through on that in July of 1949, as I recall it, and we preferred to take two bites. When we went from the unit field, then we took the optional combination and extended it all the way across.

Q. Do you recall what the local display rates of the Item were at that time?

A. No, I do not.

Q. Do you know whether or not they were higher or lower than the rates of the States?

A. Well, that is a hard question to answer, because in September of 1949, as I have testified to, they adopted a new rate card structure whereby it was termed fixed space. It went down to twenty lines five times a week for fourteen cents. That required an advertiser to contract for and to be given the hundred thousand line rate at fourteen cents a line. I think their minimum rate then on a million lines was twelve cents. I don't know all the blanket rates.

Q. Do you recall when the Item, Sunday, discontinued in 1941?

A. Do I remember when the Item discontinued the Sun- [fol. 416] day paper in 1941?

A. Yes. I think it was some time in June or July, I forget which.

Q. Did you increase your rates in the Times-Picayune, Sunday, early after the Item Sunday was discontinued?

A. I couldn't answer that question without referring to the records, Mr. Flurry. We may have. We have got

copies of all our rate cards. If you will show them to me, I can testify one way or another.

Q. The last rate card prior to 1941 which was furnished to the Government, Mr. Tims, on our request with respect to the rate cards, was May 1, 1937, on local display or retail display.

A. May 1, 1936, did you say, Sir?

Q. '37. Do you recall whether or not those rates were changed prior to 1941?

A. I would have to refer to our records, Mr. Flurry.

Mr. Wilson: May I state for the Court at this time that in producing the rate cards the other day, I only purported to produce those from 1940 forward. Now, if counsel would care for me to search our files to see the rate cards back of that——

A. I think those rate cards that counsel wanted were the general rate cards that you furnished him, weren't they?

Q. That is right, Mr. Tims.

A. And these are retail.

Q. What I was referring to in my statement, Mr. Tims, [fol. 417] was at the time the Government representatives were in the offices of the Times-Picayune Publishing Company, it was my recollection that they furnished us all of the rate cards they could then find.

A. When the Government was in, we furnished them everything that they requested. They had free access to our files, any records, and if we missed one or two, why, I don't know.

Q. I show you Government Exhibit 88 and Government Exhibit 89 and Government Exhibit 90. I will ask you, Mr. Tims, to examine those rate cards and state whether or not in 1941, October the first, I believe, you had a rate increase in the Sunday Times-Picayune-New Orleans States and did not have a rate increase in the morning or evening newspapers?

A. The rate card on "G-88", May 1, 1937, shows a milline rate in a daily 10½¢ a line. On the rate card effective October 1, '41, it still shows a milline at 10½¢ a line. Sunday rate on May 1, 1937, shows per million lines, 12.8¢ a line, and the rate card on October 1, 1941, shows a million lines at 14¢ a line. The rate card of May 1, 1937, the

million line rate of the States is shown at 6¢, and on the rate card effective October 1, 1941, the million line rate of the States is shown at 6¢.

Q. Well, is it a fact that you did raise the Sunday rates, and did not raise the daily rates on October 1, 1941, and again in 1943?

A. That is correct, from these rate cards.

Q. Now what has been the increase in your Sunday open rates in local display or retail display from 1941 to 1950? [fol. 418] A. I can't tell you without looking at them, Mr. Flurry.

Q. Well, do you know what it is in 1950?

A. No, I don't.

Q. I am handing you Government Exhibit 89 and Government Exhibit 92, showing the 1941 and 1950 display cards, respectively.

A. What do you want me to testify to?

Q. What your rate in the Sunday was for 1941 and 1950?

A. On the million lines or the open rate?

Q. Well, just give the open rate.

A. I gave you the million line on the other testimony. On the million line on Sunday, it is 24½¢, as of March 1, 1950, and on October 1, 1941, the million line rate on Sunday was 14¢ a line. The million line rate on March 1, 1950, in the daily edition was 17¢, and the million line rate on October 1, 1941, was 10½¢. The million line rate on the States, March 1, 1950, was 11¢ a line. The million line rate on October 1, 1941, of the States was 6¢ a line.

Q. Will you state the reason for your changes in the Sunday retail display rates in 1941 and 1943 at the same time you did not raise the daily rates?

A. Well, that is sort of pressing my memory, but I think it is obvious why the Sunday rate was increased, because the Sunday circulation had a greater growth. If the Sunday Item Tribune discontinued in June or July of '41, I think the ABC figures will reflect that Sunday circulation increased, so, therefore, we increased the rates.

[fol. 419] Q. Did you have a considerable gain in profit in the company's operations following the discontinuance of the Sunday Item?

A. I can't recall, but our statements that you have will speak for themselves, Mr. Flurry. I can't keep that in my mind.

Q. I will read you this statement, Mr. Tims, from your audit report of December 31, 1943, and ask you whether or not that is a correct representation: "Gross earnings amounted amounting to $1,469,073.00 were the largest in the history of the company. A gain of $647,407.00 over 1942. The enormous gain in revenue is partially due account of the Sunday Item Tribune publication discontinued on July 27, 1941; also, an increase in circulation rates, and the results gained from the business boom throughout the country." Is that a fair statement of the causes of your increased revenue?

A. Who signed it?

Q. I don't believe it is signed by anyone.

A. I didn't prepare it. Mr. Davis, I presume, the auditor.

Q. Well, I am asking you if that is a correct statement of what it says?

A. I would think so. I am not sure. I can't attest to it.

Q. Mr. Tims, what factors in selling advertising do you consider most important in obtaining advertisers?

A. Results.

Q. What enters into getting those results?

A. Sell merchandise, the cash register rings.

Q. Do you use circulation as an argument in favor of——

[fol. 420] A. Well, I haven't sold in a good while. A lot of these others around here, Mr. Murray over here, told you yesterday he could sell anything——

Q. You have written a good many letters, haven't you?

A. In the past ten years, maybe two or three. I get the lure to do it sometimes. Advertising, in my opinion, is a creative idea. You get an idea and you can sell. You can have the largest circulation in the world and bad merchandising and bad advertising, and I don't think you will sell much merchandise.

Q. Are you familiar with the advertising methods used by your company?

A. No, I'm too far removed from it. All I am looking for is that last line.

Q In other words, you don't know what the boys are out selling every month?

A. No. We may have fifty-five or seventy-five people out selling.

Q. I will ask you this: is a consistent increase in the amount of advertising in one newspaper an effective inducement to advertisers in selecting that newspaper as an advertising medium over another paper which doesn't have a similar increase?

A. Well, I think a great many people are swayed by what someone else does. I am not though.

Q. I show you Government Exhibit 95 which I believe we read this morning, and ask you if you were using the cir- [fol. 421] culation argument as a sales talk in that letter?

A. Well, that was a sales talk in the letter. Yes, it was used.

Q. So you do use circulation as an argument?

A. At times. You asked me about producing results.

Q. Did you expect that letter to produce results?

A. Certainly I did. I hoped so or I wouldn't have written it.

Q. Was the statement I have just showed you a statement of the truth?

A. Read the statement again.

Q. "The circulation enjoyed by the Times-Picayune over the New Orleans Item was such, in our humble opinion, to warrant your placing the bulk of your business in our columns."

A. I certainly do.

Q. Do you ever make similar appeals on the amount of advertising carried, lineage carried?

A. I repeat again, Mr. Flurry, I may have written three or four letters and called on two or three people. Possibly I have on lineage, but if I was out selling directly on the firing line——

Q. You are General Business Manager?

A. I am General Manager. That embraces a lot of things.

Q. Well, isn't advertising selling one of the principal jobs to be accomplished?

A. Well, I have a lot of men under me, Mr. Murray,

the Advertising Director, he has a retail advertising manager on the evening paper, one on the morning [fol. 422] paper, the classified advertising manager, the national general manager, and about seventy-five solicitors. But if you ask me how I would sell, I will tell you how I would sell——

Q. I am asking you how the company sells.

A. They go out and sell and get the business. That is all I am looking for. If they can get good copy up to influence a merchant—this last week the baseball season opened here, and I was very gratified to pick up our paper to see that we were trying to cop the cup. We got out a tabloid section and I saw a full page in there that Mr. Murray wrote, Casey at the Bat, tieing up with Hadacol. In other words, if we had had Hadacol then, Casey would never have struck out. That is my definition of advertising. Create an idea and you will sell it.

Q. Are you familiar with the publication named the New York Daily News?

A. Yes, sir, I have seen it. I saw it in New York recently.

Q. How were those papers circulated in New Orleans prior to about December, 1949?

A. Mr. Flurry, when Mr. Leonard took my deposition, I gave that to the best of my memory. I have had very little to do with that. Mr. Coleman, Vice-President and Circulation Director, handled all the details. I think I was in one meeting, Sir.

Q. What happened in that meeting?

A. Well, I remember, if my memory serves me correctly, that a man that I couldn't remember until Mr. Leonard asked me if it was him, Rucha or Rusha or some such name came in with Mr. Coleman and Mr. Bergowitz who [fol. 423] was the—I think it was Bergowitz, maybe somebody else, the country circulation manager for the New York Daily News, and I later learned that Mr. —— I forget his first name now—Annenberg, with the New York Daily News, had 'phoned Mr. Leonard Nicholson and asked Mr. Nicholson, as I remember it, if he would have any objection to the news vendors or the carriers and our wholesalers handling the New York Daily News, the same

as the Item was doing; and that is when he got in touch with Mr. Coleman. He didn't get in touch with me directly, and the only part that I can testify to of my own knowledge is that I went up to this meeting with Mr. Coleman when I first met Mr. Rusha and Mr. Bergowitz. That is all the information I have on the New York Daily News.

[fol. 424] Q. As general business manager, do you know or are you apprised of any contracts which the company entered into with outside parties?

A. Yes. I would know about them. Of course, Mr. Nicholson is president of the corporation and has, himself, many times executed a contract that I know nothing of.

Q. I ask you this: Did The Times-Picayune Publishing Company enter into any contract or agreement with the New York Daily News or its local distributor with respect to the distribution of those papers?

A. Not to my knowledge.

Q. Did you have any interest, whatsoever, in the distribution of the New York Daily News?

A. Not to my knowledge.

Q. Did you receive any profits in any way from that distribution?

A. Not to my knowledge. I have never seen them reflected on the statement of The Times-Picayune Publishing Company.

Q. Did you receive any profits in advertisements carried in the Daily News?

A. Not to my knowledge.

Q. Were your news boys absolutely free to make their own choice as to whether or not they carried or distributed the New York Daily News?

A. I can't answer that, Mr. Flurry, because I did not [fol. 425] handle the details. Mr. Coleman, whom you subpoenaed, I am sure can answer all those questions, which I am not in a position to do, because I have no knowledge of it.

Q. Was any report ever made to you by Mr. Coleman that he had entered into any agreement with the news boys as to the distribution of the New York Daily News?

A. I don't remember the details. He handled it all. He was told by Mr. Nicholson that his vendors and independent

contractors were to do the same thing that the Item did, as far as the New York Daily News was concerned.

Q. Isn't it a fact, Mr. Tims, that, so far as you know, there was absolutely no connection between The Times-Picayune Publishing Company and the New York Daily News?

A. To the best of my knowledge.

Q. Do you know what instruction was issued to the news boys of the States with respect to delivering the New York Daily News?

A. No. I do not.

Q. Did Mr. Coleman ever report to you anything that he had told them with respect to the necessity of their delivering the New York Daily News?

A. He handled all the details of it. I just don't recall just what they were.

Q. I say: Did he ever make any report to you on it?

A. He may have, but I don't recall if he did.

Q. Did he ever tell you that he had instructed the news [fol. 426] boys of the States that they could not deliver the States if they did not deliver the New York Daily News?

A. I don't recall him making that statement.

Q. After sometime in December, 1949?

A. I don't recall the details of all that.

Q. Do you deny that he made such a statement?

A. I wouldn't deny that. I don't recall it.

Q. You just don't recall any statement made by him?

A. That is right.

Q. Was your company under any obligation, whatsoever, to see that the New York Daily News was circulated?

A. Not to my knowledge. I did not know of any obligation that we were under.

Q. From whom did you purchase newsprint prior to 1941?

A. When my deposition was taken, I made the statement that I had nothing to do with newsprint in 1941. Mr. Leonard Nicholson handled the newsprint contracts. I endeavored to be helpful to Mr. Leonard, to give him the background, as much as I knew, at that time. I will be

happy to give you the same information, if you request me to do so.

Q. Did you concur with Mr. Nicholson with reference to newsprint purchases prior to 1941?

A. I think Mr. Nicholson told me in 1939 that he had negotiated or was going to negotiate a contract with Kymmene Aktiebolag——

You spell it. I can't.

[fol. 427] Q. Neither can I.

A. ——of Helsingfors, Finland that was represented in the United States by H. Riefangel.

I happen to know more about it now than I did then, and it was for 10,000 tons of newsprint to be delivered in 1940 at $5 a ton under the Great Northern price, which was the lowest United States price.

I remember him explaining it to me that on those 10,000 tons, naturally, we would have saved about $50,000.

He made a contract and I think we can show you those contracts, if you haven't already seen them, with the Montmorency Paper Company.

Q. Where are they located?

A. In New York, sir.

Q. Where are their mills?

A. There are two mills: one in Quebec and one in Newfoundland. Newfoundland is their largest. They have seven machines; and at the one in Quebec, they have four machines.

We had a contract for the full requirements of The Times-Picayune Publishing Company with their division; and, with the letter that was attached to the contract or in the contract, I have forgotten which, Montmorency Paper Company underwrote that contract in the event that this Kemmery Aqua Barge did not deliver; and, as you know, either in November or December of 1939, Russia went to war with Finland and we never received any of that Finnish newsprint. It was all supplied by Montmorency Paper Company.

[fol. 428] Q. Did you discuss with Mr. Nicholson the entering into a contract with the International Paper Sales Company in 1941 for your supplies after that time?

A. Yes. I did.

If I may continue on before that, I will come up to that point, as far as my connection was concerned.

After we received this paper from Montmorency the full requirement of 20,000 tons, with 10,000 the Finns didn't deliver, he signed again in August or September of 1940 for the full requirements in '41.

When I was in New York in April of 1941, most people that I talked to convinced me that it wouldn't be but a short time before the United States would be at war, which I concurred with them.

I told Mr. Nicholson that in my opinion of this thing he should go back to a safer supply and recommended he go back to the International Paper Company that had three mills, one in New Brunswick, one in Three Rivers, Quebec and another in Gatineau, which had about sixteen machines, altogether; and, if something occurred, why we wouldn't be depending on getting paper by water.

Q. Do you know if the company entered into a contract with the International Paper Company in 1941?

A. Yes. The records show that we did. The contract showed that it was dated August 15, 1941. I remember the date, because that is my birthday.

Q. I show you Government Exhibit 101 and ask you if [fol. 429] that is a copy of the contract.

(Document handed to the witness.)

A. This is a copy of the contract, yes.

When your gentlemen were in, we turned over the complete files to them and I think this is a photostat that we made.

Q. Now, Mr. Tims, that contract calls for an annual amount of 22,000 tons, does it not, of newsprint?

A. The contract says the entire requirement is now estimated to be approximately 22,000 tons, annually.

Q. And what period of time did it apply to?

A. The contract was for ten years: from January 1, 1942 to December 31, 1951.

Q. And what was the price of paper at that time?

A. I don't recall. I think it was $50 a ton.

Q. You may refresh your recollection from the contract.

A. Fifty dollars is shown, yes.

Q. In other words, this was a contract for a tremendous amount of paper, was it not?

A. Well, it was as much paper as we formerly used. We used 20,000 tons from the previous supplier.

Mr. Flurry: We offer in evidence Government Exhibit 101, being the contract which Mr. Tims has just identified.

Mr. Wilson: Does that have a number on it, Mr. Flurry?

Mr. Flurry: No. It does not.

The Court: It may be admitted.

[fol. 430] (The document referred to was marked G-101 for identification and was received in evidence.)

By Mr. Flurry:

Q. Mr. Tims, did you have any conferences or discussions with anyone representing the International Paper Company or the International Paper Sales Company with respect to the execution of that contract and negotiations for it?

A. No, sir.

Q. Did you ever have any discussions with Mr. Hurlbut or Mr. Wheatley with respect to the contract?

A. I knew Mr. Wheatley; and, when the International Paper Company lost the contract at the end of 1939, he spoke to me on, maybe as many as a half-dozen times, about trying to get it back. I told him he would have to sell the boss, meaning Mr. Leonard Nicholson.

Q. Did you have any conferences with Mr. Hurlbut? Or discussions?

A. No, sir. I never met Mr. Hurlbut, the best of my recollection is, until after the Item was sold, and I didn't enter into any discussion, so far as a new contract between the International Paper Sales Company and the Times-Picayune, with Mr. Hurlbut.

Q. Did that take place between the time that the Item was discontinued, the Sunday Item was discontinued and the execution of this contract?

Mr. Wilson: Did what take place?

Mr. Flurry: His conversation with Mr. Hurlbut.

[fol. 431] A. My conversation was very limited with Mr. Hurlbut.

I was up in Mr. Nicholson's office one day when he came in, I believe, with Mr. Wheatley. My recollection is that is the first time I ever met Mr. Hurlbut.

Q. What did you talk to him about at that time?

A. I was introduced to him then by Mr. Nicholson.

Q. Did you have any discussion with him?

A. No, sir.

Q. You merely met him and went away?

A. Yes. I had something else to do.

Q. Did you ever discuss with Mr. Wheatley or Mr. Hurlbut, or both, any matters with respect to the Sunday Item being discontinued?

A. No. I did not.

Q. Did you discuss with either of those gentlemen the matter of the Item's ownership changing hands?

A. At that particular meeting?

Q. At any meeting prior to execution of this contract?

A. That was the first time that I met Mr. Hurlbut. The Item had already been sold. I never knew Mr. Hurlbut before that; so, there was no occasion for me to discuss. I had no occasion to discuss with Mr. Hurlbut the sale of the Item prior to that time. I did not know him.

Mr. Wheatley had spoken to me several times that somebody was going to have to buy the Item. He had mentioned a number of names.

Q. When did that occur?

[fol. 432] A. Oh, a period of years, I guess; maybe when I was in New York in April of that year. There was no specific buyer.

He said, "What is going to happen to the Item?"

I said, "I don't know".

Q. Did you ever discuss the discontinuance of the Sunday Item or the change of ownership of the Item with Mr. Wheatley in New Orleans?

A. Not that I recall.

Q. You don't recall any discussions, whatsoever, that you had with Mr. Wheatley in New Orleans with respect to the Item?

A. About someone's buying the Item? Or the Item going out of business? Or suspending their Sunday paper?

Q. Yes.
A. No.

Mr. Wilson: What is your answer, Mr. Tims?
The Witness: No.

By Mr. Flurry:

Q. Didn't you testify in your deposition that you had a meeting with Mr. Wheatley and Mr. Ralph Nicholson and several other gentlemen over at the Roosevelt Hotel?

A. I testified in my deposition that I attended the Southern Newspaper Publishers Association Meeting in May of 1941 at the Edgewater Gulf Hotel, and that was the first time that I ever saw Mr. Ralph Nicholson. I did not meet him there. I knew who he was; because there was a panel discussion and he appeared on the panel, discussing The Future Newspapers of Tomorrow. I was very impressed with his statement, that there were going [fol. 433] to be tabloids or nothing but comics.

It was shortly after that that Mr. Wheatley phoned Mr. Nicholson or myself—and I don't recall just who—and asked us to drop over to his hotel room, which we did; and there, for the first time, I met Mr. Ralph Nicholson.

Q. Where was that meeting?

A. In the Roosevelt Hotel.

Q. In New Orleans?

A. Here in New Orleans.

Q. What was discussed at that meeting, Mr. Tims?

A. Mr. Wheatley said that Mr. Ralph Nicholson probably would be the next owner of the Item. Mr. Nicholson attempted—He didn't attempt to do it, but gave the background of being part-owner or half-owner of the Tampa Times.

As I remembered, he said he was an Episcopalian with two children, that his first job was in Richmond, Indiana, and that he had worked on the Grover Bergdoll case, and I think we had a highball there and Mr. Nicholson left and I went down to Mr. Grover Rothenburg's room. Shortly thereafter, Mr. Wheatley and Mr. Ralph Nicholson came down to Mr. Rothenburg's room and we all went down that night to Arnaud's for dinner and I paid the check.

Q. Did Mr. Ralph Nicholson say anything to you at that time about the discontinuation of the Sunday Item?

A. My recollection is that he said he intended to print a six-day paper like he was doing in Tampa.

[fol. 434] Q. Was that all that was said with reference to his operation of the Item?

A. That was all.

Q. And that is the only meeting that you recall with Mr. Wheatley or Mr. Hurlbut?

A. I had never met Mr. Hurlbut.

Q. Other than the time you met Mr. Hurlbut?

Mr. Flurry: I don't think the record shows the answer correctly, Mr. Tims.

The Witness: To what question?

Mr. Flurry: I will separate the two.

By Mr. Flurry:

Q. Do you recall any other meeting than the one you have just described at the Roosevelt Hotel and Arnaud's with Mr. Wheatley prior to the execution of this paper contract?

A. Yes. I saw Mr. Wheatley several times, I guess, in New York in 1941. Maybe he was down there after that and I may have seen him.

Q. Well, I mean about the time these negotiations were going on with respect to the paper contract.

A. I may have. I don't recall.

Q. You don't recall any of them?

A. No, sir.

Q. Did you, personally, have anything to do with the negotiations of the paper contract?

[fol. 435] A. I have answered that question already: No.

Q. Did you discuss with Mr. L. K. Nicholson the reasons for entering into the contract by The Times-Picayune Publishing Company with the International Paper Company?

A. I would have no occasion to discuss the reasons for entering into the contract with International Paper Company, because it was he who was going to make it.

My recommendation to Mr. Nicholson, if my memory serves me correctly, in April of 1941, when I was in New

York with him was that it appeared to me that shortly this country was going to be at war and, in my considered opinion, it would be best for us to go back to the International Paper Company as a safe supplier of newsprint.

Q. Was that the last discussion you had with Mr. Nicholson with reference to that?

A. I wouldn't say it was the last one, no, sir. That was the first time I had told him about it, because I was quite jittery about what was going to happen in this country.

Q. Do you remember any other particular meeting after that?

A. No particular meeting, no.

Q. Did Mr. L. K. Nicholson ever tell you that he had discussed the sale of the Item with the representatives of the International Paper Company or the International Paper Sales Company?

A. I do not recall that he discussed it with me.

Q. In other words, if he knew anything about that, he never did tell you?

[fol. 436] A. That is correct.

You know Mr. Nicholson. Mr. Nicholson doesn't do an awful lot of talking.

Q. Would it have been beneficial to you, as general manager, in the publication of the newspapers of The Times-Picayune Publishing Company to have known in advance that the Sunday Item would be discontinued?

A. I was not general manager of The Times-Picayune Publishing Company at that time.

Q. What was your position at that time?

A. I was business manager.

Q. What was the difference in your duties as business manager and your present duties as general manager?

A. I would like to go back to being business manager.

Q. That doesn't answer the question.

A. A great many duties. I have got the responsibility of it all today, where before, I did not have it.

Q. Well, what were your duties as business manager?

A. Chiefly, looking after circulation and advertising and production; that is the mechanical requirements. I played no part in the buying of newsprint at that time.

Q. In your interest with respect to production, wouldn't

you be interested in knowing that the competing Sunday paper was going to close?

A. In time, I would have been told about it.

[fol. 437] Q. You would expect an increase in your circulation, perhaps, and your advertising in your own paper, would you not?

A. Necessarily, that would follow, Mr. Flurry.

Mr. Flurry: Your Honor, we are at a change of subject matter if Your Honor wishes to adjourn at this time.

The Court: This is a good time to stop, if it is a convenient place to stop.

Mr. Flurry: Yes. There will be a complete change of subject matter.

The Court: We will stand recessed until ten o'clock tomorrow morning.

(Whereupon, at five o'clock, p.m., a recess was taken until ten o'clock, a.m., Thursday, May 3, 1951.)

[fol. 438] PROCEEDINGS OF MAY 3, 1951

(The trial was resumed, pursuant to adjournment, on Thursday, May 3, 1951, at 10:00 o'clock A.M.)

The Court: Proceed, gentlemen.

JACK SEYMOUR MARGULES, called as a witness by and on behalf of the Government, being first sworn, was examined and testified as follows:

Direct examination.

By Mr. Rashid:

Q. Would you state your name, please?

A. Jack Seymour Margules.

Q. Where do you reside?

A. 47 Palm Tree Lane, Rosalind Heights, Long Island, New York.

Q. Where are you presently employed?

A. At Calvert's Distilleries Corporation, Carstairs Division.

Q. What position do you occupy with Carstairs?

A. Advertising Manager for Carstairs.

Q. How long have you occupied that position?

A. Since June of 1949

Q. How long have you been employed by Carstairs in any capacity?

A. Since that date.

Q. Could you tell us whether or not Carstairs Distilleries Corporation places any general advertising in the City of [fol. 439] New Orleans in daily newspapers?

A. Yes.

Q. Who is the individual at Carstairs who is responsible for the handling of that advertising?

A. I am.

Q. Could you tell us where Carstairs is produced, in what city?

A. In Louisville, Kentucky, and Relay, Maryland. Two distilleries.

Q. And where is that product sold in this country?

A. In several states, about forty of them, including the District of Columbia.

Q. Is it sold in the State of Louisiana?

A. Yes.

Q. Could you tell us what value, if any, is newspaper advertising in the City of New Orleans in developing a market for Carstairs?

A. It is very valuable, very important.

Q. Would you explain that to the Court, please?

A. Well, in marketing any product, it is necessary for the public to become familiar with your brand and the reason why they should buy, and we find that newspaper advertising generally is our most effective means of bringing that message to the public.

Q. What newspaper or newspapers were you using in 1949 after you became associated with Carstairs for the advertising of Carstairs in the New Orleans area?

A. The Times-Picayune and the New Orleans Item.

[fol. 440] Q. What newspaper or newspapers are you using

at the present time in the City of New Orleans for Carstairs' advertising?

A. The Times-Picayune and States as of this day.

Q. Do you recall the approximate time when you discontinued the use of the Item for that advertising?

A. It was some time last month when the Item's schedule run out. We had been using a very small schedule in the Item.

Q. What newspaper or newspapers were you using in the year 1950 in New Orleans for Carstairs' advertising?

A. The Times-Picayune, the States and the Item.

Q. Do you recall the approximate amount of lineage you were using in the three New Orleans newspapers in 1950?

A. Yes. From January through July of 1950, I used approximately eight thousand lines in the Times-Picayune, approximately fifty-six hundred lines in the Item, and nothing in the States.

From September through December of the same year, I used approximately thirty-five hundred lines in the Times-Picayune, approximately thirty-five hundred lines in the States, and fourteen hundred lines in the Item.

Q. Did Carstairs Distilleries Corporation have a contract with the Times-Picayune Publishing Company in the year 1949, to your knowledge?

A. It is my belief they did.

Q. Do you recall approximately when that contract expired?

A. I believe the contract expired July 31 of 1950, although [fol. 441] I am not sure of our contract date because I don't handle the contracts, so far as the signing of them.

Q. But to the best of your recollection, it was approximately July of 1950?

A. That is correct.

Q. Following the expiration of that contract, did Carstairs enter into a new contract with The Times-Picayune Publishing Company, to your knowledge?

A. I believe they did.

[fol. 442] Q. Do you recall approximately when the new contract was entered into?

A. No, I don't. I imagine it would be the following day or the expiration of the old contract. I am not sure.

Q. Was a new contract entered into?

A. I believe so.

Q. You presently have a contract with The Times-Picayune Company?

A. I believe we do, through our agency. I don't, as I say, sign the contracts myself. I am fairly certain we do have a contract with the papers.

Q. According to your testimony, Mr. Margules, you did not begin to use the New Orleans States for advertising until approximately September of 1950. Is that correct?

A. That is correct.

Q. At the time that you began to use the New Orleans States for Carstairs advertising in September of 1950, did you wish to use that medium for that advertising?

A. Not particularly; no.

Q. Well, could you tell the Court the particular reason why you began to use the New Orleans States?

A. Well, when my fall schedules were made up, to begin in September, I learned that in the meantime the Times-Picayune and States had put in a forced combination whereby if I wanted to use the Times-Picayune I had to use the States.

[fol. 443] Q. Could you tell us whether or not the amount of lineage that you took in the Item in the latter part of 1950 was approximately the same proportion that you had taken in the year 1949 and early '50?

A. No, it was not. It was less.

Q. You mean the amount you took in late 1950 was less than that you had taken previously?

A. In the Item?

Q. Yes.

A. Yes.

Q. Would you tell the Court the particular reason that occasioned the reduction in the amount of advertising you took in the Item Newspaper?

A. Well, for the New Orleans market we did not increase the amount of money we appropriated for newspaper advertising, and since I was taking the States because of the new arrangement the paper had. I did not have sufficient

money to continue in the Item at the rate that I previously had.

Q. You stated, Mr. Margules, at the present time you are using only the Times-Picayune and the States. Is that correct?

A. That is correct.

Q Would you tell us the particular reason why you are no longer using the Item for Carstairs advertising at the present time?

A. Yes. It is a matter of money; that is, we had a small amount of money set up to continue the use of the Item and that money—those funds have since been exhausted and, beginning in May, I no longer use the Item.

[fol. 444] Q. You said that those funds have since been exhausted. What do you mean by "exhausted?"

A. Well, we have used them up in January, February, March, and April.

Q. Where have you used them? In which newspapers?

A. Well, we have used them in all three, but in setting up our budgets and our schedules, we only had so much money and we cut that pie up as we thought best, to get as much advertising as we could for the money, which meant that I could run in the Item. I had sufficient money to run for February, March and April, but I have used that money and I no longer have additional funds to continue the advertising.

Q. Well, what effect then, Mr. Margules, would you say that the unit rate in the Times-Picayune and the States has had upon your pattern of advertising of Carstairs' product?

A. It has done two things: It has put lineage in the States and it has reduced lineage that I might use in the Item.

Mr. Rashid: No further questions.

Cross examination:

By Mr. Phelps:

Q. Mr. Margules, the Carstairs account is only one of a number of whiskey accounts that use New Orleans newspapers, isn't it?

A. That is correct.

Q. Do you happen to know what the over-all figures are on whiskey advertising in New Orleans?

A. No, I don't.

[fol. 445] Q. I ask you if it is not a fact that the Item has had a very substantial gain in 1950 over 1949 in over-all whiskey advertising, in New Orleans?

A. I would have to look at Media Records and check it. I don't carry those things in my head.

Q. Would you be good enough to do that, please?

Mr. Rashid: If the Court please, I would like to request whether counsel is asking this witness about the liquor advertising of this particular company or liquor advertising of all companies. It is beyond the scope, if he is asking him about all liquor companies.

Mr. Phelps: I think it is perfectly proper, in line with the questions asked on direct examination.

The Court: I think so.

Mr. Phelps: Would the Court like to see the records?

The Court: No. The objection is overruled.

(The Reporter read the last question.)

A. (Examining Media Records) According to this copy of Media Records, I see where the Item, in the classification "Alcoholic Beverages, Liquors", carried 188,927 lines for the calendar year 1949. In the same classification for the calendar year 1950, according to Media Records, it was 208,678.

By Mr. Phelps:

Q. You are referring to the six-day figures, aren't you, Mr. Margules?

A. Yes, not Sunday.

[fol. 446] Q. I believe the Item also had necessarily an increase in Sunday advertising by virtue of the fact that any advertising placed on Sunday would be an increase since they did not publish Sunday in '49. Is that not correct?

A. I have never considered Sunday advertising because our company does not advertise on Sunday.

Q. Would you consult Media Records and tell us the

lineage gained by the Item for the Sunday figures, '50 over '49?

Mr. Rashid: If Your Honor please, I would like to ask that the question be more specific. He just said "lineage gained"; and did not specify the product.

Mr. Phelps: I have reference to advertising of alcoholic beverages.

The Court: It occurs to me this might be developed through other witnesses, if this particular examination of Media Records is going to be extensive.

Mr. Phelps: This is the last question on that phase.

The Court: Very well.

A. According to the sheet I have before me, I see no lineage for the Item on Sunday in 1949. The classification in 1950 for the Sunday Item, in "Liquor" shows 8,000 lines.

Mr. Phelps: Thank you, sir.

[fol. 447] By Mr. Phelps:

Q. As a matter of fact, Mr. Margules, do not the buying habits of different space buyers differ materially? It is quite a matter of discretion, isn't it? And a space buyer for one agency might analyze a situation and reach an entirely different result from a space buyer from another agency?

Isn't that true?

A. That is right.

Q. With the result that there is a considerable deviation between the buying habits among the different space buyers for all types of advertising?

Isn't that fair?

A. There is a deviation, yes.

Q. It is a pretty highly competitive medium, isn't it? The advertising field?

A. I would say so.

Q. Would you tell the Court when the Government first contacted you in connection with this testimony?

A. Approximately March 15th or 16th. It was sometime in March of this year.

Mr. Phelps: Thank you. We have no further questions, if the Court please.

Redirect examination:

By Mr. Rashid:

Q. Mr. Margules, looking at media records, would you [fol. 448] indicate the increase in the amount of advertising lineage in alcoholic beverages that has taken place in the New Orleans States from 1949 to 1950?

(Document handed to the witness.)

A. In the classification "alcoholic beverages and liquors" for the calendar year 1949, the States carried 224,750 lines. In the same classification for the year 1950, the States carried 359,692 lines.

Mr. Rashid: Thank you. No further questions.

Mr. Phelps: We have no further questions.

The Court: I will ask you this: You said, in arranging the schedule, you cut up the pie the way you thought best. What do you mean by that?

The Witness: When we go into a market or make our plans for advertising, we try to judge how much money we think we should and can afford to spend on that particular market, in dollars. Then, we turn around and see how much advertising we can buy and what we think is the best way to buy that advertising.

That is what I mean by "cutting up the pie".

The Court: Very well. That is all.

Mr. Rashid: You may step down.

(Witness excused.)

Mr. Rashid: I call Mr. James Short.

James Short, called as a witness by and on behalf of the Government, being first sworn, was examined and [fol. 449] testified as follows:

Direct examination:

By Mr. Rashid:

Q. State your full name, please.

A. James Short.

Q. Where do you reside?
A. New York City.
Q. Would you give us the address?
A. 330 East 31st Street.
Q. Where are you presently employed, Mr. Short?
A. J. Walter Thompson Company.
Q. What type of an organization is that?
A. It is an advertising agency.
Q. How long have you been employed by that agency?
A. Twenty-three years.
Q. Will you tell us the present position that you occupy with that agency?
A. Space buyer.
Q. Will you tell us whether or not J. Walter Thompson Agency places general advertising in New Orleans newspapers at the present time?
A. It does.
Q. Could you tell us the particular products which are advertised in New Orleans newspapers and which are handled by you as space buyer?
[fol. 450] A. You mean, right now?
Q. Yes.
A. Institute of Life Insurance, Pan American, Florida Citrus, Lux Toilet Soap, Radio Corporation of America, White Owl Cigars, Mentholatum.
Q. You handle those accounts and place the advertisement in the New Orleans papers?
A. Yes. I do.
Q. Could you tell us on those particular accounts, Mr. Short, what newspaper or newspapers you were using in New Orleans in the year 1949 for advertising, to the best of your recollection?
A. On these accounts?
Q. That is right.
A. In 1949, we had the Institute of Life Insurance, Pan American, Lux Toilet Soap, Brillo, Radio Corporation of America, Mentholatum.
Q. And which newspapers were you using for those products? Do you recall?
A. The Institute of Life Insurance: We used the Times-Picayune; Pan American: We used all three; Lux Toilet

Soap: We used all three; Brillo: We used the Times-Picayune.

Mr. Phelps: I didn't hear that last one.

The Witness: Brillo, Radio Corporation of America, all three; Mentholatum, all three.

By Mr. Rashid:

[fol. 451] Q. Could you tell us, Mr. Short, what newspaper or newspapers you are using at the present time in New Orleans for those products?

A. Yes. The Institute of Life Insurance, the Times-Picayune and States; Pan American, all three.

Did I give you Florida Citrus?

Q. No.

A. All right. I mean: Did I give you Florida Citrus?

Q. I don't recall. You might give it to us, now.

A. Florida Citrus, Times-Picayune and States; Lux Toilet Soap, Times-Picayune and States; Brillo, Times-Picayune and States; RCA, all three; General Cigar, Times-Picayune and States; Mentholatum, Times-Picayune and States.

Q. And in 1949, what newspapers were you using for Florida Citrus?

A. In 1949, we did not have the Florida Citrus account.

Q. You started handling it in 1950?

A. Late 1950.

Q. Now, on two particular accounts, Mr. Short, on Brillo and the Institute of Life Insurance, you stated that in 1949 you were using only the Times-Picayune.

Q. Now, at the present time, you are using the Times-Picayune and the States?

A. Right.

Q. Would you recall on those two products, in particular, when you began to use the New Orleans States for that advertising?

[fol. 452] A. On the Institute of Life Insurance?

Q. Yes.

A. Sometime during 1950.

Q. Do you know approximately when it was?

A. No. I do not.

Q. How about on Brillo?

A. Brillo, we didn't use in 1950.

Q. Then, you started using the States in 1951 on Brillo?

A. That is correct.

Q. At the time you began to use the New Orleans States for Brillo and for the Institute of Life Insurance advertising, did you wish to use the New Orleans States?

A. Not particularly, no.

Q. Could you tell the Court the particular reason why you began to use the States for that advertising?

A. Because it became a forced combination.

Q. On several of the other products, Mr. Short, you mentioned that you were using the Times-Picayune and the Item in 1949. Is that correct? On Lux and Mentholatum?

A. No. You are talking about just the morning paper?

Q. Any daily papers that you were using in 1949 on Lux and Mentholatum? And there were two other products.

A. You mentioned Lux, in particular. We were using the Times-Picayune, States and Item in 1949.

In 1951, we used the Times-Picayune and States.

[fol. 453] Q. Would you go through the other products in 1949?

The Court: Just a minute. You say, in 1951, the Times-Picayune and States.

What about 1950?

You said, with respect to Lux, you used all three papers in 1949. I thought you said in 1950 you used only the Times-Picayune and States.

The Witness: Is that Lux Toilet Soap?

The Court: Yes.

The Witness: In 1950, we had about 6800 lines in the Times-Picayune and about 3800 lines in the States and 62 lines in the Item.

The Court: Proceed.

By Mr. Rashid:

Q. Could you go through the other products in the year 1949, excluding Brillo and the Institute of Life Insurance, and tell us what newspapers you were using for them?

A. We are talking about just the accounts we are using, now? Right?

Q. That you were using in 1949?

A. All accounts?

Q. That is correct, with the exception of Brillo and the Institute of Life Insurance.

A. In 1949, we had Shell Oil, which is new, three papers. In Pan American, we had three papers.

Q. Lux?

[fol. 454] A. Lux Toilet Soap: We had three papers on Lux; Eastman Kodak; We had the Times-Picayune; RCA, three papers; Mentholatum: We had three papers.

Q. That is in the year 1949?

A. 1949, yes.

Q. What are you using at the present time for Eastman Kodak advertising in New Orleans? What newspapers?

A. None.

Q. What newspapers were you using in 1950 for that advertising in New Orleans?

A. In 1950, we had Times-Picayune and States.

The Court: What ad? What client is that?

The Witness: Eastman Kodak.

The Court: Eastman Kodak.

Proceed.

By Mr. Rashid:

Q. Do you recall when you began using the New Orleans States in 1950 for Eastman Kodak advertising?

A. No. I do not.

Q. Do you recall whether or not at the time you began to use the States for Eastman Kodak advertising, you wished to use the States?

A. No. We did not.

Q. Will you tell the Court the particular reason why you began to use the New Orleans States for Eastman Kodak advertising?

[fol. 455] A. Because we had to buy the forced combination.

Q. Are there any products that you, yourself, handle

where you used only the Times-Picayune and the Item in the year 1949? Do you recall?

A. None.

Mr. Rashid: No further questions.

Cross examination:

By Mr. Phelps:

Q. Mr. Short, as I understand your testimony, there was one account in which you were using the Item in 1949 in New Orleans and you didn't use the Item in 1950? Is that correct?

A. (No response.)

Q. It was the Lux account, I think.

A. Lux. Well, it depends on what you call "using" it.

Q. That is what I am coming to. As a matter of fact, you did use a very substantial amount of lineage in the Item in 1950, didn't you? In the American Weekly?

A. In the American Weekly?

Yes. We did.

Q. Would you tell the Court how much lineage you used in the Item in 1950?

A. No. I couldn't tell you, without looking at the records.

Q. According to my information, based on media records, you used 7600 lines in the Item through the American Weekly in 1950.

Is that approximately correct in accordance with your [fol. 456] recollection?

A. I would say that would be substantially correct.

Q. In the preceding year, in 1949, you used 2217 lines in the six-day Item?

A. That is correct.

Q. So that the Item had a gain of approximately 5400 lines in 1950 over '49?

As a matter of fact, just to keep the record straight, according to my recollection, you used 62 lines in the six-day Item on Lux in 1950. Do you have any recollection of that?

A. It just appears here on the record. I don't recall it.

Q. Mr. Short, isn't it a fact that, although there are a number of other factors that enter into space buying, the

milline rate is the basic factor that you first consider in determining your buying?

A. Well, it is an important yardstick.

Q. Isn't that the first one that you would normally turn to?

A. No. I wouldn't say so.

Q. Well, it is true, though, that what advertisers buy, generally, is readers or circulation? Isn't that true?

A. That is correct.

Q. And it is a definite advantage to a publisher to be able to offer a low milline rate, isn't it?

A. That is right.

Q. As a matter of fact, it affords him an opportunity to compete with other media and with other newspapers in other cities, doesn't it?

[fol. 457] A. That is right.

Q. And, frequently, advertisers will determine what locality to select for a campaign, considering the milline rate there as one of the vital factors? Isn't that correct?

A. That happens, yes.

[fol. 458] Q. Frequently, also, advertisers will determine whether to use radio or television or billboard or some other media because of such considerations, isn't that true?

A. Yes, sir.

Q. There are a very substantial number of national advertisers who don't use newspaper accounts at all, aren't there?

A. Yes, there are.

Q. And there are a very substantial number who use Sunday advertising substantially to the exclusion of week day newspaper advertising, isn't that true?

A. That is right.

Q. There are also a substantial number of advertisers, like the Ford Motor Company which I think is one of the clients of your agency, which advertise in all papers pretty much on an equal basis, isn't that true?

A. They advertise in a very large list of newspapers, yes.

Q. Although I suppose they do consider whether to run "A" or "B" schedules, depending upon particular circumstances and, in particular, the milline rate.

Mr. Rashid: I object, your Honor, on the ground that there has been no foundation laid, no testimony that this witness handled the Ford Motor Account, and, therefore, wouldn't know on which basis that advertising is placed.

The Court: Answer it, if you know.

Mr. Phelps: Read the question, please.

[fol. 459] (Question read by reporter.)

Q. Would you like me to rephrase that question?

A. Yes, please.

Q. I am sorry. What I am getting at is that: isn't it a fact that a milline rate of the particular publisher will frequently determine whether that publisher gets a top schedule or a lower schedule?

A. That is correct.

Q. So that from the publishers' point of view, having a low milline rate is important to him in getting the best schedules, isn't that true?

A. Yes.

Q. Summarizing your testimony, on Direct Examination, is it fair to say that insofar as some of the accounts that you buy, the effect of the unit rate has been to add the States to accounts which were already handling the Times-Picayune?

A. Yes.

Q. The unit combination rate is pretty uniform among publishers who publish morning and evening editions, isn't that true?

Mr. Kramer: We object, your Honor, on two different grounds: first, the standing objection ground; second, on the ground that there has been no showing as to the knowledge of the defendants regarding unit rate at the time they adopted it.

The Court: I don't agree with that.

Mr. Phelps: Mr. Kelley point-blank testified on that point, your Honor.

[fol. 460] The Court: I think the correspondence in Government's Exhibits; they were stated by some of the defendants, at least some of the defendants, some twenty-odd newspapers.

Mr. Kramer: That is right, Mr. Murray so stated.

The Court: In a memorandum written at the time or about the time——

Mr. Phelps: Mr. Kelley also so testified.

Mr. Kramer: Government Exhibit 72, if the Court please, was written some four, five, six months after they had their conference.

The Court: I will hear the question.

(Question read by reporter.)

A. I would say yes.

Q. It has been in effect for a substantial period of time among some publishers also, hasn't it?

A. That is right.

Q. Would you tell the Court when you were first interviewed or approached by the Government in connection with this lawsuit?

A. I don't recall. I would say it was somewhere between six weeks and two months ago. I am not sure.

Mr. Phelps: If the Court please, we have no further cross-examination.

Redirect examination:

By Mr. Rashid:

Q. Mr. Short, you stated on cross-examination, that you were using in 1950 the American Weekly of the Item, is [fol. 461] that correct?

A. That was on Lux Toilet Soap, wasn't it, in 1950?

Q. Yes. And is the American Weekly, Sunday or daily?

A. The American Weekly is supposed to be Sunday.

Q. Mr. Short, have you ever objected to the adoption of the forced—withdraw that. Have you ever objected to the adoption of the unit rate by the Times-Picayune Publishing Company either to an officer of the Times-Picayune Publishing Company or to anyone connected with Jann & Kelley Agency?

A. Yes.

Q. Would you tell us approximately when that was?

Mr. Phelps: If the Court please, I don't know whether your Honor proposes to be strict about this matter. I don't believe that has come up before in the Direct Examination, and I don't believe counsel is entitled to redirect on anything that was not brought out on cross-examination.

The Court: I will permit it.

Q. What—approximately when was that, do you recall?

A. It would be about the time the rate was announced; which I think was December, '49.

Q. Was that someone connected with Jann & Kelley?

A. Yes.

Q. And who with Jann & Kelley did you talk to?

A. I believe it was Mr. Needham.

Q. Was it by personal visit or 'phone call or letter?

[fol. 462] A. It was just verbal, in the course of the conversation.

Q. Do you recall what you told the gentlemen?

A. Well, not exactly. I just protested it.

Mr. Rashid: No further questions.

Recross examination.

By Mr. Phelps:

Q. One other question relative to the use of The American Weekly. By running a substantial amount of lineage in the Item through The American Weekly, that would tend to give you coverage of the Item's circulation within this market, wouldn't it?

A. Yes.

Q. And that would necessarily take care to a substantial extent of your needs within the Item as a whole, seven day publication wouldn't it?

A. Yes.

Q. So that you would automatically tend to discontinue or at least reduce your lineage six-day by virtue of your coverage in The American Weekly. Is that fair to say?

A. I would tend to, yes.

The Court: At the time that you notified the Picayune to put the contract into effect, had other newspapers, to your knowledge done the same thing?

The Witness: Prior to that time?

The Court: Yes.

The Witness: You mean the change to a forced combina-
[fol. 463] tion?

The Court: In other words, was that the first time you had heard of any newspaper using such a rate?

The Witness: Oh, no. Other papers not sold in combination had gone into combination rates.

The Court: Before that time?

The Witness: Before that time, yes.

The Court: All right.

(Witness excused.)

Mr. Kramer: If the Court please, perhaps the question we are going into now is one for argument at the end of the case, but we fail to see the relevancy of any question directed to other media than the newspapers. Perhaps that is simply due to a lack of confidence, and perhaps there is a different sense of the law to us, but the Government has no quarrel with the contention, which I take to be a fact, that in general advertising, there are other ways of getting to the consumer than through newspaper advertising.

If that statement will help expedite the trial, I will put it in the form of a stipulation; but as to further details of that, I just don't understand the relevancy of it, if the Court please.

Therefore, while there is no particular consequence in regard to the questions asked this witness, in order to show my position, I suppose I should ask to move to strike the questions asked the last witness concerning newspapers and other media in national advertising.

The Court: I think you had better make your objection
[fol. 464] at the proper time. I think that would probably be the way to proceed.

Mr. Phelps: Our position is that the issue is raised by the pleadings in the paragraph where the Government says that newspaper advertising is essential to the developing of a market for goods, and the answer replies that it is helpful in drawing a distinction, for which I think this testimony is material.

Mr. Kramer: If we would adopt the words "construed to be helpful", that would eliminate our objection.

JOHN G KELLEHER, called as a witness by and on behalf of the Government, after being sworn, was examined and testified as follows:

Direct examination.

By Mr. Rashid:

Q. State your full name.
A. John G. Kelleher.
Q. Where do you reside?
A. 10 Meadow Lane, New Rochelle, New York.
Q. Where are you presently employed, Mr. Kelleher?
A. Sullivan, Stauffer, Colwell & Bayles.
Q. Would you please spell those names?
A. S-u-l-l-i-v-a-n, S-t-a-u-f-f-e-r, C-o-l-w-e-l-l & B-a-y-l-e-s.
Q. What type of an organization is that?
A. An advertising agency.
Q. How long have you been employed by that agency?
[fol. 465] A. Since August of 1946.
Q. What is your present position with the agency?
A. Space buyer.
Q. What do your duties as space buyer entail?
A. The buying of newspaper space on accounts.
Q. Could you tell us whether or not your agency is placing any general advertising at the present time in the New Orleans area in newspapers?
A. They are.
Q. Do you personally handle the placing of advertising for any of those accounts?
A. Some of them.
Q. Would you name those which you handle?
A. At the current time you are talking about, as of today?
Q. That is correct.
A. All the accounts I handle, I believe, that are now running are Simonize, Bi-So-Dol Mints, Life Buoy, and possibly Noxzema, but I don't know whether that is running today or not.
Q. Were there any accounts other than those you have just mentioned that you were handling in 1949 and '50?

A. Well, besides that, I am now handling other accounts but they are not running in newspapers. I think I handled Silver Dust in 1949 and '50. To my recollection, that is the only other one.

Q. Could you tell us, Mr. Kelleher, where these various products are manufactured, to the best of your knowledge? [fol. 466] A. Silver Dust and Life Buoy Soap are products of Lever Brothers Company. They are manufactured in Cambridge for one and possibly in Hammond, Indiana, for two, but mostly in Cambridge, Massachusetts. Bi-So-Dol, I couldn't tell you that. Noxzema is manufactured in Baltimore, Maryland. I think those are the only accounts I mentioned that are running.

Q. Bi-So-Dol?

A. Well, I don't know where that is.

Q. How about Silver Dust?

A. Silver Dust is in Cambridge, Massachusetts.

The Court: You said Simonize.

The Witness: Simonize is in Trenton or New Jersey and Chicago.

Q. Where are those products sold in this country?

A. I believe all of them are sold throughout the United States. They all have distribution throughout the United States.

Q. Do these products have distribution in the State of Louisiana?

A. I believe so.

Q. Could you tell us, Mr. Kelleher, of what value, if any, is newspaper advertising in the City of New Orleans in developing a market for these products?

A. Do you mean developing a market, styling a market?

Q. Developing and maintaining a market.

A. Most of the products that I am concerned with, because we are a new agency, were developed with other agencies, so let me say in maintaining a market, they are [fol. 467] one segment of media that is used in combination with others, such as radio, television, other media to form a pattern of reaching people.

Q. Is your agency paid on a commission basis for the advertising it places for the manufacturer?

A. Yes.

Q. And does your agency prepare the advertising copy for these advertisements?

A. Yes.

Q. And where do you send that?

A. The copies?

Q. The copies?

A. You are talking about the mats or further printing of the ad?

Q. That is correct.

A. To the newspapers.

Q. Are they sent directly from your agency's office or——

A. The material, the mats, I believe, are sent from the company that makes them up. That is another department.

Q. Is that company, in the case of these particular products, located outside of the State of Louisiana?

A. I imagine they would be outside companies.

Q. Could you tell us how the payment is made for the advertisement inserted in New Orleans newspapers?

A. To the best of my knowledge, we are billed—it varies. [fol. 488] Sometimes it is by newspapers and sometimes by newspaper representatives, and again it is another department. The Accounting Department receives the bill and pays it.

Q. The Accounting Department of your agency?

A. That is right.

Q. Then do you, in turn, bill the manufacturer? By you, I mean your agency?

A. Well, yes.

Q. And they make payment to you from their offices, is that correct?

A. That is right.

Q. Mr. Kelleher, on the products that you have just mentioned which you yourself handle, could you tell us what newspaper or newspapers you were using in New Orleans in the year 1949 for that advertising?

A. I am not sure that I can tell them all. In 1949, on Bi-So-Dol—I believe it is mints—we used the Times-Picayune-States—these are just round figures. They won't check right with media records, but they will be close.

Times-Picayune-States, 180 lines; Times-Picayune, 1860 lines; and Item, 1860 lines.

The Court: Go over that again, will you?

The Witness: Times-Picayune-States, 180 lines; Times-Picayune, 1860 lines; and Item, 1860 lines. Life Buoy, 1949, Times-Picayune-States, 3,980 lines; Item, 3,400 lines. [fol. 469] The Court: When you say Times-Picayune-States, you refer to the Sunday edition?

The Witness: No, sir, these are all daily, morning and evening.

Q. Would you repeat the figures on Life Buoy?

A. Well; in '49, we had two types of schedule, the regular schedule, Times-Picayune-States daily, 2950 lines, and the Item the same amount; but we had a deal, what they call a merchandising deal, in which the Times-Picayune-States got 1,030 lines and the Item 450 lines, so it totals 3980 and 33, 3400.

Q. Would you give us the total for the year 1949 for each of the papers, to the best of your knowledge?

A. On Life Buoy?

Q. On Life Buoy.

A. Times-Picayune-States, 3980.

Q. Now do you mean the Sunday or the daily?

A. Daily. That is all daily. I am not talking about Sunday at all. In 1949 there could have been some Sunday, but I don't have it with me.

Q. When you say "Times-Picayune-States", do you mean the same amount in the Times-Picayune and the States, or the morning and evening paper?

A. Morning and evening.

The Court: That was in both papers?

The Witness: No, in each. The only other one that I [fol. 470] have that I can give is Silver Dust, and that is Times-Picayune, 5,765 and the Item, 1,921, I believe.

Q. Now could you tell us what newspaper or newspapers you were using in 1950 in New Orleans for those products?

A. Bi-So-Dol Mints, Times-Picayune-States, 1,221 lines; Life Buoy, Times-Picayune-States, 4,420 lines, Item, 4,420 lines; Silver Dust, Times-Picayune-States, 4,400 lines, and Item, 3,195 lines. Those figures may be a little off the media records because they are estimates and media records are actual.

Q. Tell us what newspaper or newspapers you are using at the present time in New Orleans for those three products.

Mr. Phelps: If the Court please, we have the same problem on '51 figures as to whether the Item is a six-day paper or a five-day and Sunday paper, or exactly what it is, so that if the question is to be asked, I believe that at least the witness should specify the division between five-day and Sunday so as to keep the record straight for '51 only, by papers.

A. Bi-So-Dol Mints using Times-Picayune-States—I can't give you the lineage because it is just what is run already. Life Buoy, as of when I left New York, it hadn't started yet, and Silver Dust, we used the Times-Picayune-States and Item.

Q. Now Mr. Kelleher, on Bi-So-Dol, you stated that in 1949, you were using the Times-Picayune Daily and the Item Daily and that beginning in 1950 you were using the Times-Picayune Daily and the States Daily, is that correct?

A. We did use some 180 lines in the Times-Picayune and [fol. 471] States combination in 1949.

Q. You mean the Daily?

A. Daily. This is all daily.

Q. That is on Bi-So-Dol?

A. That is on Bi-So-Dol Mints.

Q. Could you tell us approximately when you discontinued the use of the daily Item on Bi-So-Dol advertising in New Orleans?

A. I would say at the end of 1949.

Q. Could you tell us whether or not you had a contract with the Times-Picayune Publishing Company on Bi-So-Dol for the year 1949?

A. No, because we don't handle the contracts for Bi-So-Dol.

Q. Who handles the contract?

A. I believe it is the John F. Murray Company.

Q. Do you know whether or not the John F. Murray Company had a contract with the Times-Picayune Publishing Company for Bi-So-Dol in the year 1950?

A. No, sir, I don't.

Q. Do you know the particular reason or reasons which occasioned your discontinuance of advertising in the Item for Bi-So-Dol in 1950?

A. My recollection—in this, I have to go on my recollection, because I am not sure—my recollection is that in that year of 1949—well, let's go back to '48, we bought the Times-Picayune-States combination only. In '49, in January, we started out with the Times-Picayune and States only, but at that time there was another Bi-So-Dol product [fol. 472] called Bi-So-Dol Powder, which we thought we might put into New Orleans, or some advertising on it, and before that came about, as in the case of what we call dual appeal names of products, I changed the schedule around to run the Item with Bi-So-Dol Mints and was going to buy the Times-Picayune only for Bi-So-Dol Powder, but that schedule never came through. It kept going along through the years that it didn't come through, and then it never did run, but we decided to leave the schedule run through 1949.

By the looks, and thinking back, that is what happened in '49. In 1950, we went back to the Times-Picayune and States combination as we had in 1948.

Q. On Bi-Sol-Dol advertising, could you tell us whether or not the approximate lineage that you have taken in the New Orleans States in 1950 is the same as that you were taking in 1949?

The Court: The answer to that is very obvious.

A. It is obviously no, but conditions changed there. We only had 180 lines, I believe that was January, and then, as I said, thinking that Bi-So-Dol Powder was coming in, I made a change, so we ran roughly in 1950 520 lines in the Times-Picayune-States and 180 lines in 1949.

Q. Would you tell us the reason for increasing the lineage in the New Orleans States for Bi-So-Dol advertising?

A. Increasing from what?

Q. In 1950 over the amount that you had in 1949?

A. Because I put the whole schedule in the Times-Pica- [fol. 473] yune-States.

Q. Why did you put——

The Court: Let's get this straight. In 1949 you gave the Item 1860 lines, didn't you?

The Witness: That is right.

The Court: Didn't you give the Times-Picayune 1860 lines also?

The Witness: That is the morning only.

The Court: Morning only?

The Witness: That is right.

The Court: Then you gave the States 180 lines, is that correct?

The Witness: That is right. Well, the Times-Picayune also got that 180. I believe that is January only. I am just trying to recollect this——

The Court: I see. The States got 180?

The Witness: That is right.

The Court: The Times-Picayune got 180 plus 1860?

The Witness: I believe that is right.

The Court: Then each of the Times-Picayune and the States got 1221 in 1950?

The Witness: That is right.

The Court: I see. An increase for the States and a decrease for the Picayune?

The Witness: That is right.

[fol. 474] Q. Would you tell us the particular reason why you put the full schedule in the Times-Picayune and the States?

A. To reach as many people at the lowest cost.

Q. Now, going to the Life Buoy advertising in the year 1949, would you repeat the total lineage for the Life Buoy advertising in the three daily newspapers?

A. Well, these are according to some records that I had, but they may not check with media records. I have a total of 3980 for the Times-Picayune and States, and 3400 for the Item.

The Court: When you say the Times-Picayune and States, do you mean 3980 for each of them?

The Witness: That is right.

Q. And could you tell the corresponding amount in 1950?

A. My records show 420 lines in the Times-Picayune, 420 in the Item, that is daily.

Q. On Silver Dust, you stated that in 1949, you were using only the Times-Picayune and the Item, is that correct?

A. That is right.

Q. And in 1950 you were using all three newspapers?

A. That is right.

Q. Would you tell us approximately when you began to use the New Orleans States for Silver Dust advertising in 1950?

A. Well, I would say January or February, maybe February. I don't know, but that generally starts in February.

Q. At the time that you began to use the New Orleans [fol. 475] States for Silver Dust advertising, did you wish to use that newspaper?

A. That is a hard question to answer, because if the money is available—behind the buying of this space, you have got two things: you have got sales and you have got budget. When you ask me a question like that, I don't know if the money was available and we had the money to spend there—it could be spent there. There is a lot of other things behind this big lineage. In other words, as I say, sales can increase or decrease from one year to the other and budgets can increase or decrease from one year to the other, so when you ask me a question like that, just from looking at what I have here, I would say the money was available and we spent it.

It so happens that the territory that New Orleans is in on Silver Dust is one of the best for that product.

Q. Well, did the unit rate of the Times-Picayune Publishing Company have any effect upon that choice?

A. I couldn't say. That again is based on how much money was available, and that is a figure I don't know.

Q. Well, could you say generally whether or not the unit rate of the Times-Picayune Publishing Company had any effect upon your advertising as a whole in the City of New Orleans in newspapers?

A. In these accounts, I would say no.

[fol. 476] By Mr. Rashid:

Q. I am not asking you for any particular effect it has had upon any particular newspaper, but I want to know whether it had any effect upon your advertising pattern,

in the amount of money you have spent in this particular market for newspaper advertising.

Mr. Phelps: If the Court please, I don't understand the question. Could I have it repeated, please?

(The Reporter read the question.)

Mr. Phelps: If the Court please, I believe the witness has given us the facts as to all the accounts. I move that the question be stricken—I object to the question. I don't see what effect it would have.

The Court: He says he would have to examine these figures to answer it. Did you not say that?

A. That is correct.

The Court: Any answer you gave would be based on these figures.

A. Are you (counsel) talking about right now or any period?

Mr. Rashid: I am talking about the period of 1950: starting February, 1950, until the present time.

A. Working on any given account, again, we would normally start with a budget and sales, which means each year is separate, each section of the country is separate; so that one would have to go back to work sheets th. we start making newspaper lists up from.

Q. Are you familiar with any other accounts that are handled by your advertising agency?

A. I am familiar with all of them, but to know what has [fol. 477] been done in any given city, in any year, no!

Q. Mr. Kelleher, could you tell the Court whether or not the unit rate of The Times-Picayune Publishing Company has required you to spend more money for New Orleans newspaper advertising than you ordinarily would have?

A. From the three accounts, and taking 1950-51 previously, where we had been using the Times-Picayune-New Orleans States anyway, I would say no.

Q. What about any particular cases where you were not using the New Orleans Times-Picayune and the States at the same time?

A. In what period?

Q. In that same period.

A. '50 and '51?

Q. From 1950 until the present time.

A. Well, as I look at Silver Dust, in '50 and '51, we used all three papers.

Q. As compared to 1949, which papers?

The Court: Let's look at Silver Dust. If we analyze these figures I think we can shorten this examination.

Silver Dust: (Look at your figures.) In 1949 the Times-Picayune and States each got 5,765 lines.

A. No; the Times-Picayune only.

The Court: Oh, the Times-Picayune only.

A. Yes.

The Court: And the following year, 1950, the Times-[fol. 478] Picayune got 4,400 and the States got 4,400?

A. That is right.

The Court: The Item got 1,921 in '49 and 3,195 in 1950.

A. That is right.

The Court: Could the enforced rate in the Picayune compel you to spend more money in the Item than you had in 1949?

A. To spend more money in the Item?

The Court: Yes.

A. No. The circumstances behind that, again I say, are sales and the amount of money to spend.

The Court: Take Life Buoy——

A. Let me give you the background on Silver Dust.

The Court: Take Life Buoy: Let's get these figures. In 1949 in each of the Times-Picayune and States, 3,980 lines. Correct?

A. That is right.

The Court: In 1950, 4,420 lines.

A. That is right.

The Court: That is an increase of only 440 lines, is it not,——

A. Yes, sir.

The Court: ——for each one.

A. That is right.

The Court: In 1949 the Item got 3,400 lines, and in 1950, 4,420; an increase of 1,020 lines against 440 in the others.

A. That is right.

[fol. 479] Mr. Rashid: No further questions.

Cross examination.

By Mr. Phelps:

Q. Mr. Kelleher, directing your attention to the Noxzema account, according to my information the Noxzema account bought the Times-Picayune morning and the States evening in 1948, probably mostly in combination. Does that check with your recollection?

A. Probably. It is not an account I worked on in 1948; I don't believe so.

Q. Isn't it a fact that in 1950 the Item, which had not been used in '48 or '49 for Noxzema, was added to the schedule for approximately 1,830 lines?

A. 1950: was that the end of the year?

Q. I only have media records for the year 1950 indicating a total use of 1,831 lines.

A. It is hard for me to answer. If it was the end of the year it could have been because there was extra money in September, October, November and December. I do remember on the Noxzema account,——

Q. But do you know the Noxzema account had not used the Item in '48 or '49?

A. That is right.

Q. On the Bi-So-Dol account, if I understood your testimony correctly you stated that you did not use the Item in 1948; that in 1949 because of a particular campaign you ran a schedule of about 1,600 lines in the Item. Media Records gives 1,872 lines.

[fol. 480] The Court: He said 1,860.

A. I said 1,860.

Q. I apologize; my recollection of your testimony was incorrect.

Strike the question, please; I will rephrase it.

By Mr. Phelps:

Q. As I understand your testimony, the Bi-So-Dol account did not use the Item at all in 1948?

A. In '48; that is right.

Q. But in 1949 they ran a schedule as a part of a particular program connected with Bi-So-Dol powder?

A. It was set up for that; that is right.

Q. But that program or plan did not materialize.

A. That is right.

Q. And that was the reason you stopped that schedule in the Item. Is that correct?

A. It did not stop. It ran through the year.

Q. It ran through the year, but it ran to completion?

A. That is right.

Q. You permitted it to run to completion, so that the whole plan was permitted to go through to completion and was not in any way interfered with by the unit combination rate?

A. That is right.

Q. As a matter of fact, you are running some schedules on Bi-So-Dol in the American Weekly and have been since the early part of 1950. Isn't that correct?

[fol. 481] A. I think it's the early part of '50.

Q. And you ran schedules in January, February and March of '51, in the American Weekly?

A. That is right.

Q. So that you get coverage in the Item on your Bi-So-Dol product through that medium, don't you?

A. That is right.

Q. Are you familiar with the Carter Products, which is one of the accounts of your agency?

A. Well, they have two products: Rise and Arrid.

Q. Are you familiar with the Arrid account?

A. (No response heard.)

Q. According to Media Records, Carter Products has never used the Item daily or Sunday on Rise. Would that check with your recollection?

A. All I can answer is to say that I know they didn't use Sunday because they don't use Sunday newspapers. Now, daily, I don't know.

The Court: I don't think he is qualified to answer that question.

Mr. Phelps: Yes, sir. I will cease that line of examination, sir.

Q. On the Life Buoy account, my figures vary somewhat from yours because my figures are based on Media Records, so I will ask you if these are not approximately correct.

The Item, in 1948, carried about 1,399 lines. Would that [fol. 482] be about right? That is Life Buoy soap.

A. Is this six days?

Q. They were only publishing six days in '49.

A. That is right: in '49. That, I haven't got.

Q. This is '48.

A. That, I haven't got.

Q. You don't have the figures for '48 on Life Buoy?

A. No.

Q. In 1949, on Life Buoy soap, the Item carried 4,278 lines. Would that be approximately correct?

A. That could be. From the records that I have; they might have cancelled an ad or two that I did not pick up when I just jotted these notes down.

Q. According to my information, in 1949, Life Buoy soap ran approximately 5,000 lines in the Times-Picayune morning and approximately a thousand lines in the States evening. Would that be approximately correct?

A. In the Times-Picayune only, in '49?

Q. No, sir; in the Times-Picayune morning, for 5,000 lines, and in the States, evening, for 1,000 lines.

A. I would have to go to Media Records for that.

Q. The purpose of my question is to ask you if it is not a fact that in 1950 you added the States to the full schedule of the Times-Picayune without in any way affecting the amount of advertising lineage in the six-day Item?

[fol. 483] A. That is right.

Q. On Silver Dust, according to my information the Item had a gain, '50 over '49, of approximately 2,000 lines. Would that check with your figures?

A. I would say, roughly, 1,200.

The Court: You had better figure that again.

A. Well, the only way I can figure it, Your Honor, is from Media records.

The Court: I see. Well, let it stand.

By Mr. Phelps:

Q. According to my information, in February and March, 1951, you had been running approximately equal schedules on Silver Dust in the Times-Picayune morning

and States evening editions and in the Item evening editions.

A. I would say approximately; yes.

Q. Mr. Kelleher, as I understand the function of an agency such as yours, you make recommendations to your clients, which they approve or disapprove. Is that correct?

A. Recommendations of all media, including newspapers.

Q. Yes, sir.

A. That is right.

Q. Could you tell us when the Government approached you first in connection with this litigation, approximately?

A. Oh, within the last month or two months, I would say: five or six weeks ago. I am not quite sure.

[fol. 484] Q. You are not familiar with the Smith Bros. account, are you?

A. Not for question of lineage; no.

Q. Do you happen to know whether it is a fact that the Smith Bros. account has apparently always bought the Times-Picayune-States in combination whether it was sold as a unit or not?

A. I believe that is true.

Q. It has never bought the evening Item, has it?

A. I don't think so.

Q. But it does use This Week and the American Weekly?

A. That is right.

Mr. Phelps: We have no further cross examination, if the Court please.

Redirect examination.

By Mr. Rashid:

Q. Mr. Kelleher, you have read off, or at least approved the list showing the gains from Media Records of the Item for '50 over '49. Would you read the similar gains of the States for '50 over '49 for the Noxzema, Silver Dust and Life Buoy?

Mr. Wilson: Just a moment. Are those figures prepared by Mr. Kelleher or is he asking him to read——

Mr. Rashid: I am asking him to read them.

Mr. Wilson: I object to having the witness read the figures when they are not his figures. He did not prepare

them. Media Records are rather difficult to begin with. There may be errors in it. That is not the book itself; they are compilations.

[fol. 485] The Court: I take it the book is available to follow it.

Mr. Wilson: Right. It is not quite that easy, if Your Honor please, to follow some of these things from Media Records.

The Court: What are these figures?

Mr. Rashid: These are figures, Your Honor, taken directly from Media Records, merely copied down and proofread. They are month by month figures, and giving annual totals for these.

The Court: You don't want him to read them month by month?

Mr. Rashid: No; just the annual totals I want.

The Court: That is with respect to what?

Mr. Rashid: With respect to Silver Dust, Noxzema, and Life Buoy.

The Court: He has not given figures previously on Noxzema.

Mr. Rashid: Counsel asked him previously about figures on Noxzema, Your Honor.

Mr. Phelps: Is it your purpose to restrict this to figures for Noxzema in the Item for 1950?

Mr. Rashid: My purpose is to indicate the gain in lineage in the States on these three products, '50 over '49.

Mr. Phelps: I submit that is a matter counsel should have brought out on direct examination.

The Court: You say Bi-So-Dol, too?

Mr. Rashid: No, Your Honor. I am covering the three [fol. 486] accounts counsel has covered on cross examination. They were all three mentioned in the direct examination.

The Court: I think it is repetitious. I have the information here, I think. If there is any difference in the figures we have, I think you can develop them through another witness.

I will sustain the objection.

Mr. Kramer: If the Court please, before this witness leaves the stand, I would like to say that from the line

of questions Your Honor asked him, it is clear to me that the Government has not been clear in getting over the reason for calling a considerable number of these witnesses. The testimony of at least half of them is directed solely to the issue whether or not the trade of advertisers has been restrained; not whether the trade of the Item has been restrained. So that when Your Honor spoke of the situation, if you were referring to the situation with respect to the Item, I quite agree that the figures are perfectly plain. I would suppose, also, they are perfectly plain in showing what effect, if any, the forced combination rate—unit rate (excuse me) had on the States.

The Court: The only reason I suggested we use the term "unit rate" is to avoid objections from opposing counsel.

Mr. Kramer: I understood that, Your Honor.

The Court: I don't think there is any reason, particularly, for the objections, but I thought it would save time.

Mr. Kramer: I agree with Your Honor. My expression was designed to show that I am——

[fol. 487] The Court: Now, what is the situation now? I still don't understand the purpose of your statement. Suppose you repeat it.

Mr. Kramer: The purpose of my statement is to make it clear to the Court that the national advertising space buyers who are appearing here today fall into three categories. Some will testify, according to the Government's light, as to the effect of the unit rate upon both the Item and the advertisers, in terms of restraining their trade. Some will testify as to the effect solely on the Item, and some will testify as to the effect solely upon the advertisers.

Now, it is the Government's position with respect to the witness Kelleher that if the figures speak for themselves they show substantially no restraint upon the Item, and in our judgment a substantial restraint upon the advertiser, in that he suddenly goes up in his States lineage.

The Court: I understood you to say, first, that the Government was not interested in developing what effect it had on the Item, in this unit rate. You did not mean that?

Mr. Kramer: Oh, no; no: with this witness. We knew these figures before we put him on. We certainly could

not advance this witness' testimony as proof of our charge the unit rate had a restraint on the Item.

The Court: What purpose is his testimony? I would like to know that.

Mr. Kramer: To show the restraint upon the advertiser, (It is argument) whom we say has been compelled to purchase the advertising in the States in [fol. 488] 1950 he did not purchase in 1949 because of the unit rate. I wanted to make it clear that these witnesses——.

The Court: You think you have developed that through this witness?

Mr. Kramer: No, Your Honor, but the point I was making was if Your Honor is going to rely on the figures then the figures are perfectly clear: what happened. We would change our whole line of examining witnesses then, and just have them submit the figures.

The Court: Well, if the Court is not supposed to rely on the figures to any extent I am wondering why they are being developed?

Mr. Kramer: The Court is supposed to rely on the figures. My point is these figures show a clear increase in the States lineage.

The Court: They show also a clear increase in the Item lineage.

Mr. Kramer: That is correct, Your Honor, but the Government's position is not that the Item is not gaining in lineage; the Government's position, with respect to the figures, is two-fold: First, that the States gained enormously more than the Item, relative to the total amount, and, second, that regardless of the effect of the forced combination, if any, on the Item, in some cases it also had an effect or had an independent effect upon the advertisers by requiring them to buy advertising space they would not otherwise have bought. But I just wanted to make it clear, regardless of what we prove, if anything, as Your Honor suggests, by this witness, we did not present him for [fol. 489] the purpose of proving anything regarding the restraint upon the Item: only restraint upon the advertisers.

Mr. Wilson: I assume there is no restriction upon the

defendants using the witness' testimony for any purpose which they may find it useful?

Mr. Kramer: That is correct, Your Honor.

No further questions of this witness, unless Your Honor has some.

(Witness excused.)

The Court: Gentlemen, we will take a recess until a quarter of twelve.

(Short recess.)

[fol. 490] HARRY JOHNSON, called by and on behalf of the Government, being first sworn, was examined and testified as follows:

Direct examination.

By Mr. Turnage:

Q. Will you please state your full name and address.

A. Harry M. Johnson, 4011 York Avenue, North, Minneapolis, Minnesota.

Q. What is your occupation or business, Mr. Johnson?

A. I am a director of media for Campbell-Mithun Advertising Agency.

Q. How long have you been with that agency, Mr. Johnson?

A. I have been with them seven years.

Q. How long have you been media director for that agency?

A. Seven years.

Q. What are your duties as media director, Mr. Johnson?

A. My duties are to sit in and formulate recommendations for the advertising media to be used, the amount of the particular program, which means the amount of space, and setting up the actual schedules of advertising, issuing the orders, placing the contracts, anything that has to do with media.

Q. Did your agency place general advertising in daily New Orleans newspapers in the year 1949?

A. Yes. We did.

Q. Did you place general advertising in New Orleans [fol. 491] daily newspapers in the year 1950?

A. Yes. We did.

Q. For what particular products or accounts did your agency place advertising in daily New Orleans papers in those two years that you have just mentioned?

A. We placed advertising for Occident Cake Mix, a product of Russell Miller Milling Company, and advertising for Gold Seal Company on glass wax.

Q. Is that known as Gold Seal Glass Wax?

A. That is right.

Q. Where is the Russell Miller Milling Company located?

A. Their home headquarters are in Minneapolis.

Q. Do they manufacture the product or produce the product in Minneapolis?

A. Some of their product. They also have mills at Alton, Illinois and Buffalo, New York.

Q. That product is now being distributed in New Orleans?

A. That is right.

Q. What is the situation with reference to Gold Seal Glass Wax. Where is that manufactured?

A. That is manufactured in Camden, New Jersey.

Q. And is that also being distributed in New Orleans?

A. Yes. It is.

Q. Referring only to Occident Cake Mix at the present time, Mr. Johnson, you stated that you used daily New Orleans newspapers in the year 1949 for [fol. 492] the advertising of Occident Cake Mix.

Could you give the approximate lineage that you ran for Occident in 1949?

A. Can I refer to some notes I have?

Q. Just a moment. Would you spell the name of your agency that you are employed by?

A. Yes. Campbell, C-a-m-p-b-e-l-l hyphen M-i-t-h-u-n.

Q. Referring back to my previous question, Mr. Johnson: Will you state the approximate amount of lines that you ran in daily New Orleans newspapers in the year 1949 and specify which paper ran the lineage, please.

A. Well, in the Times-Picayune on Occident Cake Mix, we scheduled approximately 9700 lines; in the Times-Picayune, Sunday, approximately 3,000 lines; in the Item, 12,840 lines, and approximately 3900 lines in the New Orleans States.

The Court: How much in the Sunday paper?

Mr. Phelps: Three thousand lines.

By Mr. Turnage:

Q. Will you give the corresponding lines for the year 1950?

A. Times-Picayune, 10,124. That is morning; and, on Sunday, Times-Picayune, 2,000; the Item, 3,360; and the States, 12,863.

Q. Mr. Johnson, to digress just a moment: If you want to display your product that you are advertising before people living outside of the City of New Orleans and also for the people that are living in New Orleans, what two New Orleans newspapers, exclusive of the unit combination, [fol. 493] without the unit combination—What two New Orleans newspapers would you select to reach that market?

Mr. Phelps: If the Court please, I object to the question. We have been rather patient with leading questions, and I think it certainly would expedite the whole trial to permit them; but it seems to me that to suggest that he would like to have only two papers, to have a question as leading as that question, is going a little too far.

I object to the form of the question.

The Court: I think the question is objectionable, because it includes the unit rate. There aren't two papers which are not included in the unit rate. He couldn't answer the question.

Mr. Turnage: I meant by the question, if Your Honor please: What two papers would he select of the three papers which are in New Orleans for that advertisement to reach that market.

The Court: Develop that in another question, sir.

By Mr. Turnage:

Q. What papers would you select of the three to reach that market?

A. Will you repeat that question?

Q. To reach readers, to reach people that are located outside of the city limits of the City of New Orleans and to also reach the people which are in New Orleans, what newspapers would you select?

A. Well, when we did have the option, we quite often used the Times-Picayune and the Item. Those are the two newspapers.

Q. Why? What was your reason for making such a selection?

[fol. 494] A. Well, we used the Times-Picayune to get the outside coverage; and, assuming that we could eliminate some duplication, we would pick another paper, that is, a paper that is not owned by the same people, to increase our city coverage and eliminate some of the duplication.

Q. What would be your selection, Mr. Johnson, if you wanted to completely blanket the city and not go outside of the confines of the city limits?

A. If we had the option or selection, it would be to use the two evening papers: the Item and the States.

Q. Mr. Johnson, to go back to the lineage advertising which you gave us a few moments ago: Could you explain to the Court the reason for this change that took place from 1949 to 1950?

A. Well, in 1950, when it was necessary to buy the States and the Times-Picayune, in combination, our contract was in effect on Occident until May; and so, through May, when we had the option, we bought the Item plus the States. Then, after that, we started in the fall schedule and we used the Times-Picayune and States, because we needed that to get the best possible coverage; and, since we had to buy the combination, why, we did not have any additional money to use the Item.

Q. Do you recall the last month in which you placed lineage in the Item?

A. The last what?

Q. Month of 1950 or the last month that you placed advertising in the Item.

A. Are you referring to the Item?

[fol. 495] Q. Yes.

A. In May, 1950.

Q. Approximately when did your contract with the Times-Picayune run out? The contract that you have mentioned a moment ago?

A. Apparently in May, 1950.

Q. Have you run any lineage in the Item since that date?

A. Not to my knowledge.

The Court: Since what date?

The Witness: Since May, 1950.

Mr. Phelps: If the Court please, I am not clear on which contract he is talking about? Is this Occident Cake Mix? Or is this the Gold Seal?

The Court: Occident.

By Mr. Turnage:

Q. Mr. Johnson, can you give us approximately your schedule for Gold Seal in the year 1949?

A. We only have the actual records, I think, in 1949. We ran a full-page ad in the Times-Picayune, the States and the Item.

In 1950, I think we ran two full pages in the combination of the Times-Picayune and States.

Q. Did you run any in the Item?

A. Not in 1950, I don't believe.

Q. Was there any particular reason or reasons why you did not run any in the Item for that year? For the year 1950?

A. Well, I think that with a smaller budget, we weren't [fol. 496] able to use all three papers; and, I believe, with the combination, we needed the coverage of the Times-Picayune and the States.

Q. Are you carrying any other accounts in the City of New Orleans in newspapers in the City of New Orleans?

A. Yes, sir.

The Court: Just a minute.

You say you ran a full page in each of the three papers in 1949.

The Witness: Three papers.

The Court: So that was three full pages? Correct?

The Witness: That is right.

The Court: Then, you ran two full pages in 1950 in each of the Picayune and the States? Correct?

The Witness: No response.

The Court: That made four full pages, didn't it?

The Witness: That is right.

The Court: Is there any reason why you couldn't run a full page in the Item and the Picayune and the States and then a full page in the Item?

It seems to me you ran more pages than you did in '49, but you say the reason you didn't in the Item was that you didn't have enough money.

The Witness: I think that in 1949 the advertising was on Glass Wax; and I believe in 1950, the advertising was on a new product, Gold Seal Self-Polishing Floor Wax. [fol. 497] I believe that the idea was that they felt that they had to hit the same audience at least twice, being it was a new product.

The Court: I see. All right.

By Mr. Turnage:

Q. Does your agency carry any other products in New Orleans newspapers?

A. Repeat that question.

Q. Does your agency or did your agency in 1949 and 1950 carry any other accounts in the daily New Orleans newspapers?

A. To the best of my knowledge, no.

Mr. Turnage: You may cross examine.

Cross examination

By Mr. Phelps:

Q. Mr. Johnson, directing your attention to the Gold Seal Company's products, in 1948, you ran equal schedules in the Times-Picayune, morning, the Item; evening, and in the States, evening?

Isn't that correct?

A. In 19-what?

Q. In 1948, you ran equal schedules in the Times-Picayune morning edition, evening edition and in the Item evening edition?

Isn't that correct?

A. It could be. I don't recall the 1948 figure.

Q. In 1949, you ran even schedules in the Times-Picayune, morning edition, in the States, evening edition, and in the Item, evening edition?

[fol. 498] Isn't that correct?

A. What account is this, now?

Q. This is Gold Seal Wax?

A. That is right.

Q. Would you tell the Court why, if you prefer evening papers, you ran even distribution, morning and evening combination and the Item, in 1948 and 1949, when there was no unit combination?

You could have run in the States and the Item, then, couldn't you?

A. That is right. I assume that we wanted to take advantage of the outside coverage offered by the Times-Picayune and had the money available to do it.

Q. In 1950, you ran no advertising at all on Glass Wax in New Orleans? Is that correct?

A. I don't think we did, no.

Q. But you recommenced in 1951?

A. That is right.

Q. Floor Wax, you had not advertised in 1948 or 1949? Is that correct?

A. That is right.

Q. The Court asked you what I think is a very pertinent question, as to why you didn't distribute your advertising on Floor Wax between the two publishing companies in 1950.

Isn't it a fact that, normally, when you introduce a new product you use ~~every available medium for~~ introducing that product?

[fol. 499] A. It depends on the amount of the budget available.

Q. But, generally speaking, it is more important to get

all newspapers or editions, with a new product, than it is when you are maintaining a product?

Isn't that true?

A. Sometimes.

Q. Well, that is the general rule, isn't it, Mr. Johnson?

A. Sometimes.

Q. And yet, you, when you are maintaining a product, use the Times-Picayune, morning, and evening and the Item; but when you are introducing a product, you tell the Court that you can only use morning and evening.

Can you reconcile that?

A. Well, when Glass Wax was introduced, that was a product which was new and had very wide acceptance; and, as a result, we knew the sales were going to be high and we could start in using every available medium.

In the case of Self-Polishing Floor Wax, which is a highly-competitive item and certainly had nothing new like Glass Wax, why, we realized that we would not have the sales. The best we could do was to have a small portion of Floor Wax sales and, therefore, we had a limited budget.

Q. Are you suggesting that your budget was more limited in '50 for Floor Wax than in '49 for Glass Wax?

A. In the over-all picture, yes.

[fol. 500] Q. In New Orleans, it was not, though, was it? You spent more money in 1950 on Floor Wax in New Orleans than you spent in 1949 on Glass Wax in New Orleans?

Isn't that true?

A. That is right; but on Glass Wax, we also had radio involved; so, although the newspaper expenditure might have been high, that might not be true of the total advertising expenditure in New Orleans.

Q. Referring to the Occident Cake Mix account: In 1948, according to media records, you used 4800 lines in the morning Times-Picayune, 4800 lines in the evening Item.

Does that check with your recollection?

A. What period was that?

Q. In 1948, on Occident Cake Mix?

A. I don't recall the '48 figures. That is probably right.

Mr. Phelps: If the Court please, I think it is important to have the witness check those figures from media records. It will only take a minute, if the Court please.

I will proceed with the examination.

The Court: All right.

By Mr. Phelps:

Q. Do you recall any single instance on any product in the years 1948, '49 and '50, where you have bought evening papers, only, in New Orleans?

A. Repeat that question, please.

Mr. Phelps: Read the question.

[fol. 501] (The Reporter read the last question.)

A. I don't understand that question.

By Mr. Phelps:

Q. The plain fact of the matter is that at no time during 1948, 1949 or 1950 did you use only evening papers. Isn't that true?

The Court: You may answer.

A. In September, October, November——

Q. I am asking about particular years, Mr. Johnson, not particular months.

The Court: Maybe he can say that during those months they only did use afternoon papers. I don't know.

Let him proceed.

What were you going to say?

A. In the fall of 1949, we used two evening papers.

By Mr. Phelps:

Q. You also used the morning paper in 1949, didn't you?

A. We used the Sunday paper.

Q. What product is that?

A. Occident.

Q. Cake Mix?

A. That is right.

Q. You stated to the Court you used 9700 lines in 1949 in the morning Times-Picayune.

A. That was in the first half of the year.

Q. The plain fact of the matter is that there is not one

[fol. 502] single year, '48, '49 or '50, on any one of those products where you have followed what you said were your true wishes of buying only evening papers? Isn't that true?

The Court: I don't recollect this witness having said that.

Mr. Phelps: If the Court please, he said, specifically, that if he had an option, he would use only the two evening papers, and the plain fact of the matter is that he has never done that.

The Court: Did you say that?

The Witness: I didn't say that.

The question was: If, to blanket the city, and you weren't interested in outside circulation, would you use two evening papers?

My answer to that question was "yes".

By Mr. Phelps:

Q. That had no reference, then, to the City of New Orleans?

A. It has no what?

Q. That had no reference to the City of New Orleans?

A. The question was: If I wanted to blanket the city, proper,——

The Court: Any city.

A. ——would I use two evening papers; and my answer was "yes".

By Mr. Phelps:

Q. I am trying to reconcile your opinion with your practice, in which you have consistently bought equally in all three papers or editions in '48 and '49.

[fol. 503] Mr. Turnage: If Your Honor please, the witness has just finished testifying that during the fall of '49 he bought two evening papers, to the absolute exclusion of the morning paper, and I object to pursuing this matter any further.

The Court: I think counsel misunderstands the situation with respect to this witness' testimony.

He was giving an example: If he intended to blanket the

entire metropolitan area, that is, any area outside the city, the buying area, he would follow one plan. If he wanted to blanket the city, proper, he would follow a different plan.

He hasn't said here that he was interested in blanketing the City of New Orleans. If he had said that, then your question would be pertinent.

The objection is good.

Mr. Phelps: I will withdraw the question.

By Mr. Phelps:

Q. Directing your attention to the Occident Cake Mix account, isn't it a fact that your contract on that account expired on November 18, 1950?

A. Actually, I think it expired in either February or March, 1950, and we were given an extension to the end of Russell Miller's crop year, so that we could buy separately. The crop year ends as of May 31st. I think we were actually given the extension to have an optional buy until May 31, 1950.

Mr. Kramer: Will you read that back, please.

[fol. 504] (The Reporter read the last answer.)

By Mr. Phelps:

Q. Referring to your statement that you bought two evening papers at one time: You also were buying the Dixie Roto and the Times-Picayune on Sunday at the same time, weren't you?

A. That is right.

Q. I notice that in 1949 on Occident Cake Mix, your No. 1 selection was the New Orleans Item? Is that correct?

A. You mean, by the total number of lines?

Q. The total lines, weekday, yes.

A. In total lines, they had the most space.

Q. You ran your heaviest schedules in the weekday Item?

A. Actually, if you take the morning on actual, total lineage, the Item had the heaviest.

Q. So that that was your No. 1 selection in 1949, but not in 1950?

A. I won't say it was our No. 1, because we had the combination of the Times-Picayune, morning, and the Sunday rotogravure, which was considerably more expensive; so, actually, I would say that probably during that year the Times-Picayune combination of Sunday and daily was our No. 1. We put——

Q. But you ran more lines in the six-day Item than you did in either the six-day Times-Picayune or the six-day States? Isn't that true?

The Court: In what year?

[fol. 505] Mr. Phelps: In 1949.

A. Six-day, yes.

By Mr. Phelps:

Q. You ran about 3,000 more lines in the Item than you did in the Times-Picayune, morning?

A. Daily, yes.

Mr. Phelps: If the Court please, I have asked for the original contract which this gentleman had on Occident Cake Mix. It is my information that the contract expired on November 18, 1950, which would mean that the unit combination rate was in effect as to that account for only a month and a half of the year 1950.

I ask the permission of the Court to have the witness step down, with permission to recall him in about fifteen or twenty minutes, if it should develop that my information is correct.

I ask Your Honor's indulgence in that regard.

The Court: All right.

Do you have any further questions?

Mr. Turnage: If your Honor please, after counsel has refreshed his recollection or had the chance to study the contract, I may wish to pursue the matter further, then.

The Court: You may step down. Wait in the court room, sir.

(Witness excused.)

Mr. Turnage: Shall we continue on?

The Court: Yes.

[fol. 506] Mr. Turnage: Mr. Donald Harris, please.

DONALD HARRIS, called by and on behalf of the Government, being first sworn, was examined and testified as follows:

Direct examination.

By Mr. Turnage:

Q. Will you please state your name and address.

A. Donald Harris, 524 West Belton, Chicago, Illinois.

Q. What is your occupation or business?

A. I am a space buyer in an advertising agency.

Q. What is the name of that advertising agency?

A. Tatham-Laird, Inc.

Q. What are your duties for that agency?

A. I am space buyer.

Q. Is your agency placing advertising in New Orleans newspapers? Daily New Orleans newspapers?

A. At the exact present time, I do not believe we have any schedules running.

Q. Did you run any in 1950?

A. Yes, sir.

Q. How long have you been with the agency that you mentioned?

A. Approximately a year and a half.

Q. During the year 1950, what accounts did you run? What daily newspapers did you use in New Orleans?

A. Without having the exact figures here and to the best [fol. 507] of my recollection, it was Admiral Refrigerators and, I believe, Bendix home appliances, Bendix automatic washer and possibly the dryer.

Q. What daily papers did you use to present those products to the public?

A. To the best of my recollection, it was combination Times-Picayune and States and a less amount in the Item.

Q. What particular product are you referring to?

A. On both products, if I remember; but more so on Admiral than Bendix.

Q. You do not recall the approximate lineage in the papers on Admiral Refrigerators?

A. On Admiral, I believe it was roughly 1,000 lines in

the Item and maybe 8,000 or 10,000. I believe it was four pages in the combination Times-Picayune-States.

Q. Mr. Harris, is there any particular reason or reasons why you ran so much less lineage in the Item than you did the other afternoon newspapers, namely, the New Orleans States?

Mr. Phelps: If the Court please, the record shows that the amount of lineage run in the Item was relatively negligent in 1949; so, I object to the use of the words "so much less".

The Court: The objection is overruled.

A. Would you repeat the question.

Mr. Turnage: Would you read the question.

(The Reporter read the last question.)

A. I certainly believe that on just about all products the [fol. 508] Times-Picayune is probably the leading newspaper in the city. If we bought that—and we were fortunate to buy the Times—we didn't have any money left.

Q. Did you handle any accounts with the Tatham-Laird agency for 1949?

A. I came there in September of '49. Most clients worked on a calendar year or fiscal year which corresponds very closely to a calendar year, so I didn't have too much to say about 1949 advertising.

Mr. Turnage: No further questions.

The Court: What about Bendix? You don't have those figures?

The Witness: In my mind, I have the rough figures.

Mr. Turnage: No further questions.

Your witness.

Cross examination.

By Mr. Phelps:

Q. Mr. Harris, according to my information on Admiral Corporation, you used 7,000 lines, 7,040 lines in the Times-Picayune and States combination in 1949.

Mr. Turnage: I object, Your Honor.

This witness has stated that he came with the agency in September of 1949 and had nothing to do with the account during that year.

For that reason, I would ask that this witness be concerned only with 1950.

[fol. 509] Mr. Phelps: I think, to keep the record clear, the witness has indicated to me—Now, I may have misunderstood his testimony—that he began using the States when the combination rate went in.

The record will show that the combination was used fully in 1949 before it was sold as a unit.

For that reason, I think it is material, and I would ask the witness to check media records in that respect, in order to verify that information, or I would ask the leave of the Court to produce an excerpt from media records in that regard, whichever is more simple.

Mr. Turnage: No objection, Your Honor. There is no objection to the excerpt; but, as I stated before, this witness is now in charge of the purchase and selection of space. He was not in 1949.

The Court: Let's see what he knows about it. He may know nothing at all about the 1949 and that would put an end to it.

Do you know anything about the space?

[fol. 510] A. I know something about the lineage used, but, as everybody has said all morning, various space buyers have various opinions. I cannot quote or be responsible for my predecessor on Admiral Corporation account.

The Court: Do you know what he did take, regardless of——

The Witness: I know that at that time, the optional combination had more lineage than the Item. Exactly, I don't know.

Q. What we are getting at, Mr. Harris, did you or did you not know that the optional combination, as you put it, was used throughout 1949 on Admiral Corporation?

The Court: If you do know, say so; if you don't, say that.

A. I would like to explain a little bit. If you mean as an optional combination that each insertion, the same ad,

ran, say, during the same week, I don't know.—If you mean that they used lineage in both papers, I do know. In other words, you could buy singly and at the end of the year you still had the same total lineage in each paper, or you could buy this combination and——

Q. The amount of lineage you used in the Item in 1949, you have no knowledge about either?

A. I have it roughly, the same as I do in the optional combination. I believe it was, maybe, a thousand lines.

Q. According to media records, you used a thousand lines in the Item in 1949, 7040 lines in the Times-Picayune in 1949, morning, and 7,057 lines in the [fol. 511] States, evening, in 1949, which would pretty clearly indicate that you had bought the combination, wouldn't it?

A. No, I did not. As I stated before, I came to my agency in September of '49, and I had no control or authority or recommendation on that account during that time. Maybe the agency did, but I am speaking of myself.

Q. What I am trying to get at, you had the same information about buying in the Item as you had about buying in the States and Times-Picayune in 1949, isn't that correct?

A. From an agency's standpoint.

Q. I mean you didn't handle either one of them?

A. No, I did not.

Q. But when you went to make your selection in 1950, didn't you notice that you had been buying the combination in 1949 as a matter of record?

A. No, because——

The Court: When he says "you", he means your agency.

The Witness: But it isn't up to me as buyer to recommend to the agency. It is none of my business to either add or detract.

The Court: Listen to the question. Will you read it?

Mr. Phelps: I will ask another question that I think will clear it up, if the Court please, may I?

Q. You don't know whether at that time Admiral was using the Times-Picayune and States on an optional combination in 1949 or not?

[fol. 512] A. I know they ran a space in it.

Q. But you do not know whether it was on an optional base or not?

A. No, I don't know that.

Q. So that you don't know whether your running in combination in 1950 constituted a change of policy or a continuation of the former policy?

A. No.

Q. You have no knowledge on that?

A. No, sir. May I make an assumption?

Q. I think it would be better not to, if you don't have knowledge of it.

A. I have no knowledge of it.

Q. Did you give any figures on the Bendix Home Appliance account?

A. I gave a rough estimate was all.

Q. I believe that account has been using the Times-Picayune-States and Item in 1948, 1949 and 1950, is that correct?

A. Yes, sir.

Q. You are not familiar with the General Mills accounts, are you?

A. Yes, I am.

Q. Doesn't that buy Times-Picayune, Sunday, only?

A. Comics, last year, nothing running at the present time.

Q. That is the Times-Picayune Sunday Comics Section?

[fol. 513] A. Yes. It was bought from a group, Metropolitan Comic Section.

Q. According to my information, you had a small schedule on Kix in 1950?

A. Not on Kix.

Q. Are you familiar with the account of the Parker Pen Company?

A. Yes. We handle the Flame and Air Lighter, cigarette lighter.

Q. That runs exclusive in the Times-Picayune Dixie Roto?

A. Yes.

Q. Are you familiar with G. A. Swenson account?

A. That is Swanson. Yes, sir.

Q. That account runs exclusive in the Sunday Times-Picayune in This Week magazine, doesn't it, in New Orleans?

A. That was at their last fiscal year, which ended March first. This year they are not in it.

Q. When did the Government first approach you in connection with this case?

A. Approximately three weeks ago.

Q. Mr. Harris, there is a pretty heavy mortality in newspaper advertising, isn't there? I mean accounts are in one year and out the next?

A. Well, certainly, but that is true in any medium, and I would not guess the percentage of it.

[fol. 514] Q. Sure, but it is very substantial, isn't it?

A. I hesitate to answer without knowing what you mean by substantial.

Q. Well, for instance, do you know Mr. Barnes of ANPA?

A. I have met him.

Q. I am advised that he has estimated that the mortality is about fifty per cent. Would you, from your experience and knowledge of that matter, concur approximately with that estimate?

The Court: I think it depends upon what you mean by mortality too, doesn't it?

Mr. Phelps: I mean, in one year and out the next.

A. I would not argue with him, but my accounts say that is wrong.

Mr. Phelps: We have no further questions, if the Court please.

Mr. Turnage: No furthr questions, your Honor.

(Witness excused.)

Mr. Phelps: If the Court please, we have this contract now. If you want to finish up with that with this witness, it will just take a minute and he can get through.

The Court: All right. Let us finish it.

Mr. Kramer: The Government will have to go back and get some of its files, your Honor, so we would have to ask him to come back anyhow.

The Court: Very well, Court will stand at recess until [fol. 515] 2:00 o'clock.

(Court adjourned.)

[fol. 516] AFTERNOON SESSION

HARRY JOHNSON, recalled to the witness stand for further examination, testified as follows:

Cross examination.

By Mr. Phelps:

The Court: You may proceed.

Q. Mr. Johnson, I believe you testified on Direct Examination that your contract with the Times-Picayune Company expired in May of 1950, is that correct?

A. I thought I said that I thought it expired in February or March of 1950.

Q. Of 1950?

A. Yes.

Q. I would like to refresh your recollection if I might. Would you look at this document, which I believe bears your signature and explain to the Court briefly what it is?

A. Pardon?

Q. Would you look at that document, which I believe bears your signature, and explain to the Court briefly what it is.

A. Well, it is a contract covering space for Russell Miller Milling Company on Occident Flour and Mixes, space to be used in the Times-Picayune for one year beginning November 19, 1949, through November 18, 1950.

Q. I believe it quotes rates for the morning only, doesn't it?

A. That is right.

[fol. 517] Q. So that, in point of fact, the unit combination rate did not take effect on the Occident Flour account until November 18 of 1950, is that correct?

A. Repeat those dates.

Mr. Phelps: Will you please read the question?

(Question read by reporter.)

A. Technically, I think that the new rate card was issued effective December 1, 1949, changing the—putting in the forced combination, which I believe carried a sixty day clause, so actually it should have gone into effect February 1, 1950, as a forced combination regardless of the contract.

Q. You never got any notice from the Picayune that they were going to exercise the sixty day cancellation clause, did you?

A. No, I can't recall.

Q. As far as you remember, you never got any such notice, did you?

A. I don't recall.

Q. According to that contract, you had a right to buy the Times-Picayune, morning only, until November 18, 1950, didn't you?

A. I don't think that is right.

Q. Well, would you read what the contract says in that respect?

A. It says: "Space is yours for one year beginning November 19, 1949, through November 18, 1950. It shows a morning and evening rate of 56¢ per line open, 54½¢ for five thousand lines, 53¢ for ten thousand lines, and the [fol. 518] individual morning rate is 40¢ per line open, 39¢ per line for five thousand lines, 38¢ per line for ten thousand lines."

Q. So that it does quote you a rate, morning only, from November 18, '49, to November 19 of '50, doesn't it?

A. It quotes those rates, but I think usually all newspaper contracts are issued with the understanding that they can be cancelled in sixty days, ninety days——

Q. But you never got any notice of cancellation and in the absence of such a notice, your contract would continue to be in effect, wouldn't it?

A. As I recall, there was some correspondence which actually gave us the privilege of buying separately through Russell Miller's Crop Year in May.

Q. In point of fact, according to the company's records, you continued to buy the Times-Picayune and the States separately until August of 1950. Does that check with your recollection?

A. It doesn't check with my recollection. My recollec-

tion is that starting in August, we had to buy the combination.

Q. I think you testified a little earlier that starting in May you had to buy the combination.

A. No, I said through May. I meant to say through May.

Q. Well, didn't you buy six hundred lines in the States in June?

A. I guess we did.

Q. Didn't you buy six hundred lines in the Times-Pica-
[fol. 519] yune only in July of 1950?

A. Not according to my records.

Q. How much did you buy in July of 1950?

A. Nothing in July.

Q. According to my information, the first time you actually used the combination consistently in 1950 was in August. Does that check with your records?

A. August.

Mr. Phelps: If the Court please, in view of the confusion, I believe it is necessary for us to identify the contract, and we offer the same in evidence.

Q. Would you identify the document, which I will mark "Defendant 4", and state what it is.

(The document was marked "Defendant 4" at this time for identification.)

A. This is a contract covering space used for one year beginning November 19, 1949, through November, 18, 1950, for Russell Miller Milling Company on Occident Flour and Mixes.

Q. Thank you, Sir.

Mr. Phelps: We offer defendant's "D-4" in evidence.

The Court: It will be admitted.

(The document marked "D-4" for identification, was received in evidence.)

Q. On the basis that that contract gave you the right to buy either morning or evening up to November 18, 1950, [fol. 520] the unit combination rate was in effect, as to Occident Cake Mix, for less than a month and one-half in 1950. Isn't that correct?

A. I don't believe that is correct. I think that after what we call our 1949-50 schedule was completed, and we started a new crop year, I think that we had to buy the combination.

Q. Would you explain to the Court why that was, in view of the contract that gave you the right to buy separately through November?

A. Well, ordinarily, a newspaper contract carries a cancellation privilege with a sixty or ninety day notice.

Q. Would you produce any cancellation notice that you received from the Times-Picayune Publishing Company?

A. I do not have it. I think in my file there is some correspondence regarding it, regarding the contract. I do not have it.

Q. So far as you know, there was no such cancellation, is that correct?

A. I think that there was some correspondence indicating that through May or June we could buy separately, but after that, we had to buy the combination.

Q. Was your contract ever amended in that respect?

A. Well, I am not sure of that.

Q. Did you receive an announcement of the new general rate card which the Times-Picayune Publishing Company put into effect on February 1, 1950?

A. I assume we did.

Q. I show you a document marked "G-33" and ask if you [fol. 521] will read the first paragraph of that document. Read it out loud please.

A. "All contracts now in effect will be carried out to expiration as written, but all contracts received on and after December 1, 1949, must be in conformity with the new rate card effective February 1, 1950."

Q. So that your contract was prior to that time, wasn't it? It was in November?

A. That is right.

Q. So that that notice told you that it would be carried to completion, didn't it?

A. On the basis of this notice, yes.

Mr. Phelps: We have no further cross-examination.

Mr. Kramer: If the Court please, we wonder if there would be any objection if we requested this witness to look

through his file when he gets home and to send, either to the defendants, or the Government, the entire file relating to this transaction.

Mr. Phelps: There is no objection as far as we are concerned, but that was the company policy.

Mr. Kramer: Secondly, we would like the Times-Picayune Publishing Company to produce all documents in their possession relating to this transaction. In a moment we shall introduce a document relating to this transaction.

Mr. Phelps: We have here our entire file, if the Court please. Would counsel care to look it over? I say our entire file. This is the purchasing records for 1949. There [fol. 522] is a purchasing record for an earlier time which you might get. If there is anything further, we will produce it after a complete search.

Redirect examination.

By Mr. Turnage:

Q. Mr. Johnson, I hand you a letter, two letters, copy of a letter and an original of a letter that has been produced by counsel for defendants, and I ask you if this letter refreshes your recollection any whatsoever relating to the matters about which you have testified?

A. I recall there was considerable confusion, and according to this letter, I mentioned in this letter that I was of the opinion that our contract started as of May 24.

Q. Of what year?

A. 1949.

Q. Mr. Johnson, did you or did you not have a contract with the Times-Picayune Publishing Company for the purchase of lineage in the States in 1949?

A. I think we did.

Q. Do you recall the termination date of that contract?

A. I would imagine they were both run at the same time.

Q. By "run at the same time", what dates do you mean?

A. According to my understanding in that letter, from May 24, 1949, through May 21, 19—or May 23, 1950.

Q. Well, you testified earlier this morning that you were of the opinion that your contract expired in January or February of 1950, and that you thought that you received

an extension through the Russell Miller Crop Season. I [fol. 523] wonder if you could have had reference then to the States' contract then or not?

A. Frankly, I can't recall. All I can recall is there was a lot of—quite a bit of correspondence regarding it.

Mr. Turnage: If your Honor please, I would like to offer in evidence Government Exhibit Number 102. I will read it.

The Court: Has it been identified?

Mr. Turnage: This is a letter, your Honor, which was produced by the Times-Picayune Publishing Company, addressed to Mr. Tims from Mr. Kelley.

Mr. Wilson: Let's have witness identify it.

Mr. Turnage: We will have it identified, your Honor. I was under the impression, your Honor, that defendants had stipulated that we may offer into evidence any letters which were produced to the Government out of their files without identification by a witness on the stand.

The Court: Is this one of those letters?

Mr. Turnage: Yes, sir.

The Court: Proceed.

Mr. Turnage: I will read from the letter the paragraph which pertains to the Campbell-Mithum Agency. If defendants would like the whole letter read, we will be glad to do so.

(Mr. Turnage read Government Exhibit 102.)

Mr. Phelps: Your Honor, we call for the production of the States' contract refefred to, and we have one other [fol. 524] question in connection with the letter.

Recross examination.

By Mr. Phelps:

Q. Mr. Johnson, would you read that portion of the letter which refreshed your recollection as to the date of the contract.

A. This was actually a contract which was issued on May 24 to cover space as used for one year beginning November 19, 1949, through November 18, 1950. The revision

which you had dated November 13 was issued in order to show morning and evening rates separate.

Q. I think that is sufficient. Now what part of that letter makes you think that your contract began to run in May?

A. It was my idea that it was May 24, but I could be wrong.

Q. Well, read it.

A. It was actually a contract which was issued on May 24 to cover space as used for one year beginning November 19, 1949, through November 18, 1950.

Q. So that if that letter refreshes your recollection at all, it refreshes to the effect that your contract was for one year from November 18, 1949, to November 18, 1950, is that true?

A. It should be.

Mr. Phelps: We have no further questions.

The Court: Let me understand something. Didn't I hear this witness testify, or was it developed here, that he was charged under the unit contract first in September, 1950; [fol. 525] his contract had until November to run while he was charged the first of September.

Mr. Phelps: He elected to run advertising in both papers in September.

The Court: I see. And it was cheaper under the unit rate than it would be to take the rate in each individual paper?

Mr. Phelps: That is correct. In other words—well, I think your Honor stated it.

Mr. Turnage: We have no further questions.

(Witness excused.)

[fol. 526] Charles Pumpian, a witness called by and on behalf of the Government, being first sworn, was examined and testified as follows:

Direct examination.

By Mr. Turnage:

Q. Will you please state your full name and address?

A. Charles Pumpian.

Q. Your address, Mr. Pumpian?

A. 1100 North Dearborn, Chicago, Illinois.

Q. What is your business, or occupation, Mr. Pumpian?

A. Media Director for an advertising agency.

Q. What is the name of that agency?

A. Henri, Hurst & McDonald, Inc., at 121 West Wacker Drive, Chicago, Illinois.

Q. What are your duties as Media Director for the aforementioned agency?

A. Well, in the overall planning of advertising campaigns for clients, I am responsible for the selection and recommendation of media. As such, my job is analysis, preparation of recommendations, submission to clients and after approval, handling the physical details through my department for arrangements with media, and working with media to secure full merchandising and other cooperation.

Q. Did your agency place general advertising in daily New Orleans newspapers in 1949 and 1950?

A. Yes, sir.

[fol. 527] Q. What products do you advertise in the New Orleans area?

A. Ballard & Ballard; and in 1949 and the first six months of 1950, the Blue-Jay foot products, a line of Bauer & Black.

Q. Do you know what happened to the Blue-Jay account?

A. As of July 1st, 1950, the account was assumed by the Leo Burnett Agency.

Q. What products do Ballard & Ballard produce?

A. Ballard & Ballard produce a complete line of flour: primarily the famous Obelisk brand. They manufacture a complete line of mixes, including cake mix, corn bread mix, hot roll mix, and in addition the oven ready biscuit and frozen rolls.

Q. Are those products being distributed in New Orleans?

A. Yes, sir.

Q. Where are the factories of Ballard & Ballard located?

A. Louisville, Kentucky.

Q. What daily New Orleans newspapers did you use for the Ballard & Ballard account in 1949?

A. In 1949 we used the Times-Picayune and States.

Q. What newspapers, daily newspapers, did you use in the New Orleans area in the year 1950?

A. During the first six months of 1950, from February through May, we used the Times-Picayune and Item. During the second six months, from September through December, we used the Times-Picayune and States.

Q. During 1949, or the period which you stated that you [fol. 528] used in 1949, the T. P., morning, and States, did you use any Item lineage in the daily newspapers?

A. No, sir.

Q. During the portion of 1950 in which you stated you used the Times-Picayune morning and the Item, did you use any States lineage?

A. No, sir.

Q. During the latter six months, or the latter half of 1950, the period in which you stated you used the Times-Picayune and the States, did you use any Item lineage?

A. No, sir.

Q. Will you give us your reason for changing from the Times-Picayune and States to the Picayune and Item in the first half of 1950?

A. In the Fall of 1949 the Item solicited the Ballard account on the basis of making available a new type of merchandising assistance. This consisted of soliciting tie-in ads from retail grocers. These ads would run on the same page as the thousand line two-color Ballard ad and the tie-ins from the retailers would run also in color, spotted on the same page. We decided to test this type of plan and if possible to determine whether it would offset the seven cents a line advantage which the States enjoyed over the Item.

Q. Will you state, Mr. Pumpian, your reason, or reasons, for discontinuing the Times-Picayune-Item combination and returning to the Times-Picayune-States combination?

A. The unit combination of the Times-Picayune and States, which I believe went into effect February, 1950, [fol. 529] The Times-Picayune contract which we had permitted us to complete the current schedule which ran in the spring of 1950. Then, for the fall the unit combination was necessary. The Item was dropped.

Q. When you say the unit combination was necessary, just what do you mean by that, Mr. Pumpian?

A. Well, prior to the unit combination we could buy the Times-Picayune or the States individually, or in combination. After that time the unit was required.

Q. Mr. Pumpian, do you have with you the approximate figures on the lineage which you ran in 1949 and 1950?

A. In 1949 we ran in the Times-Picayune and States a total of approximately 17,870 lines;—

Q. Pardon me. Do you mean by that that you ran approximately 17,000 lines in each paper?

A. In each paper.

During 1950, the first six months, we ran 7,940 lines in the Times-Picayune and 7,940 lines in the Item. During the last six months of 1950 we ran 9,150 lines each in the Times-Picayune and States.

Q. And will you state again the expiration date, to the best of your knowledge, of the Times-Picayune '49-'50 contract?

A. I frankly cannot recall.

Q. You stated earlier, I believe, that you were permitted to purchase the Times-Picayune alone through May or June, or through the first six months of 1950. Is that correct? You did not have to buy in combination?

[fol. 530] A. To the expiration of the contract, or schedule rather, which we had set up during the first six months of 1950.

Mr. Turnage: Your witness.

Cross examination.

By Mr. Phelps:

Q. Mr. Pumpian, it has been the policy of Ballard & Ballard to buy the Times-Picayune combination for a good many years, has it not?

A. That is right.

Q. Would you tell us when that started, according to the record you have?

A. Well, the last record, that I have here is 1947.

Q. Did you buy the combination exclusively then, or with the Item?

A. During 1947 we purchased all three newspapers.

Q. What about '48?

A. In 1948 we used only the Times-Picayune.

Q. My records indicate a schedule of about 3,400 lines in the States in '48. Does that check with anything you have?

A. When? During the second six months of 1948, which was the start of the new crop year, I have indicated 8,000 lines in the Times-Picayune and the States.

Q. In 1949 you used the combination Times-Picayune and States, exclusively, didn't you?

A. Yes, sir.

Q. In 1950 you used approximately 8,530 lines in the [fol. 531] Item. Is that correct?

A. My records show 7,940.

Q. That would be a total overall gain, 1950 over 1949, for the Item of 7,900 lines, according to your figures, and 8,500 lines, according to my figure. Is that right?

A. Yes.

Q. The schedule that you ran in the Item was an experimental schedule wasn't it, Mr. Pumpian?

A. Yes, sir.

Q. And it was not in accordance with your general practice of using the combination. Is that right?

A. That is right.

Q. You completed your experimental schedule in accordance with your understanding with the Times-Picayune Publishing Company. Is that correct?

A. (No response.)

Q. I will withdraw that question.

Didn't you complete the schedule you had planned in the test schedule?

A. The schedule that was ordered, we completed.

Q. Are you familiar with the Raytheon Television Receivers account of Belmont Radio Corporation, which is a Henri Hurst & McDonald account?

A. Yes, sir.

Q. I believe that account has used the Times-Picayune [fol. 532] and States combination in 1950?

A. Yes.

Q. It also used the Item in 1950. Does that check with your recollection?

A. I can't confirm that.

Q. Referring to your schedule run in March of 1951, which Raytheon Television had, my records indicate 2,400 lines in the evening Item, and 1,210 lines in the Times-Picayune and 1,205 lines in the States. Would that be approximately correct, in accordance with your recollection?

A. It could be.

Q. In other words, you ran the same amount with the Item Company that you ran total with the Times-Picayune Publishing Company?

I am not trying to hold you to exact figures, but is that approximately correct, according to your recollection?

The Court: I don't know that he said that.

A. I don't know.

Q. Do you recall running a heavier schedule in the Item than you did in the combination?

A. As a matter of fact, an assistant in the department, who works on the Raytheon account, handled the scheduling of those newspapers and I don't have the records with me. I'm sorry.

Q. Are you familiar with the International Shoe Company account?

A. Yes.

Q. According to my information that account used the Dixie Roto Magazine for a fairly heavy schedule in 1949, and that is the only advertising in newspapers used since [fol. 533] that time, in New Orleans. Does that check with your recollection?

A. That is right.

Q. So that that account did not use newspapers in New Orleans in either '49 or '50?

A. That is right.

Q. Are you familiar with the Kroehler Manufacturing Company account?

A. Yes, sir.

Q. According to my information that account used the Dixie Roto exclusively in 1948 and has not used New Orleans newspapers since that time. Does that check with your recollection?

A. That is right.

Q. Are you familiar with the Lennox Furnace Company account?

A. Yes, sir.

Q. According to my information that account used no newspaper advertising in 1948 or '50, but in 1949 used approximately 4,700 lines in the Sunday Times-Picayune. Would that be approximately correct?

A. Yes.

Mr. Phelps: We have no further questions.

Mr. Turnage: That will be all.

(Witness excused.)

[fol. 534] CHARLES MCGINNIS, a witness called by and on behalf of the Government, being first sworn was examined and testified as follows:

Direct examination.

By Mr. Rashid:

Q. State your name, please.

A. Charles McGinnis.

Q. Where do you reside?

A. 2806 Clark, Detroit, Michigan.

Q. Where are you presently employed?

A. Cadillac Motor Car Division, General Motors Corporation.

Q. How long have you been employed by General Motors?

A. By General Motors?

Q. That is correct.

A. About twenty-three years.

Q. And how long have you been employed in the Cadillac Division?

A. About three and a half years.

Q. What is your present position in the Cadillac Division?

A. I am the Assistant Merchandising Manager.

Q. Would you tell us what your duties are in connection with that position?

A. Well, as the Assistant my main functions pertain to sales promotion. That is, the preparation of booklets, leaflets, programs, and so forth.

[fol. 535] Q. Who is your immediate superior?

A. C. W. Schooley.

Q. And what position does he hold?

A. He is the Manager of the Merchandising Section and his primary functions—He is responsible for the entire Section. His primary efforts are devoted to advertising.

Q. Do you have any connection with the advertising of Cadillac Motor Car Division?

A. Yes; as his Assistant I work with him on those things.

Q. Do you know whether or not Cadillac Motor Car Division places general advertising in Newspapers in the City of New Orleans?

A. They do, through their agency.

Q. Would you tell us where Cadillac automobiles are manufactured?

A. Detroit, Michigan.

Q. And where are they sold?

A. Well, they are sold throughout the world.

Q. Are they sold in the State of Louisiana?

A. Right.

Q. Could you tell us, Mr. McGinnis, what value, if any, is newspaper advertising in the City of New Orleans in the promotion or the developing of a market for Cadillac automobiles?

A. We believe the newspaper medium is an excellent one for the promotion of our product, both here and elsewhere.

Q. Would you tell us what newspaper or newspapers [fol. 536] you were using for Cadillac advertising in the City of New Orleans in the year 1949?

A. (Examining document) In 1949 we used the Times-Picayune.

Q. Would you tell us what newspaper or newspapers you used for Cadillac advertising in New Orleans in the year 1950?

A. Times-Picayune, the evening States, and the Item.

Q. Would you give us the approximate amount of advertising lineage that you took for Cadillac in those newspapers for the years 1949 and 1950?

A. Well, in 1949, for the Times-Picayune, according to the records I obtained from our agency, there were 28,402 lines. In 1950 for the Times-Picayune, 19,966; the States, 13,159; and the Item, 965.

[fol. 537] Q. Did Cadillac Motor Car Division, to your knowledge, have an advertising contract with The Times-Picayune Publishing Company in the year 1949?

A. Yes.

Q. Do you know approximately when that contract expired?

A. I, frankly, don't know. I assume, in 1950.

Q. Do you know approximately when in 1950?

A. Again, I assume around the first of June.

The Court: On what do you base your assumption?

The Witness: Well, I know that we have a new contract as of June 1, 1950; so, I would assume our old one expired prior to that time.

By Mr. Rashid:

Q. Calling your attention to the advertising lineage in the newspapers which you used in New Orleans in the years 1949 and '50, it appears that you began to use the New Orleans States for advertising in approximately March of 1950? Is that correct?

A. That, I don't know. I haven't it broken down; so, I don't know what time of the year it occurred, except I do know how much occurred prior to June 1st.

Q. Could you tell us whether or not at the time you began to use the New Orleans States for Cadillac advertising in 1950 whether you wished to use the States at that time?

A. Oh, definitely, because during the first six months of 1950 we put 9,845 in the Times-Picayune and 3,038 in the [fol. 538] States, and that is on the old contract.

Q. Do you recall whether or not at the time you used the New Orleans States in the last six months of 1950 you wished to use the New Orleans States for Cadillac advertising?

A. I would say that we did.

Q. Did you ever receive an announcement, Mr. McGinnis, of the unit rate of the Times-Picayune Publishing Company in 1950?

A. I, personally, did not. I am sure that we did at the plant.

Q. Were you aware of the institution of the unit rate with The Times-Picayune Publishing Company in 1950?

A. In 1950?

Q. Uh-huh.

A. Yes.

Q. Did the announcement of the unit rate of The Times-Picayune Publishing Company have any effect upon your selection of advertising media?

A. Well, as you understand, I don't select the media, other than to assist in the approval of the recommendation from the agency.

I would say, to answer your question, with the new contract, we increased our advertising in the States.

Q. Did you increase it to an amount greater than you wished to do?

A. I don't know, frankly.

Q. Do you know whether you would have increased the amount of lineage that you took in the States, if the unit rate were not in effect.

[fol. 539] Mr. Phelps: If the Court please, I think that is the same question counsel asked before.

I object to the question.

The Court: You may answer it, if you can.

A. I am not sure that I can. Repeat it.

Mr. Rashid: Read the question.

(The Reporter read the last question.)

A. I don't know, but I doubt it.

Mr. Kramer: I didn't hear that.

The Court: I don't understand the answer. At least, I am not sure that I do.

A. Well, by the record, it indicates that we are using the same lineage in the Times-Picayune and in the States after June 1st.

The record further indicates that prior to June 1st, we were not using as much in the States as we were in the

Times-Picayune; so, I say, again, that I don't know for sure, but I doubt it.

By Mr. Rashid:

Q. You doubt what?

A. I doubt that we would have increased our lineage in the States, had it not been for the forced combination.

Mr. Rashid: No further questions.

Cross examination.

By Mr. Phelps:

Q. Just one thing, Mr. McGinnis: According to my information, the Item gained 965 lines, weekday, in 1950 over 1949.

[fol. 540] I think that is the same thing you testified to.

A. That is correct.

Q. They also ran, according to my information, 840 lines on Sunday, which they, of course, didn't run in 1949?

Is that correct?

A. That is correct.

Q. And you ran a schedule in January of '51 in the Item, didn't you?

A. Yes, sir; but I don't know if it was January. We ran one the first three months of the year.

Q. Of '51?

A. Right.

Mr. Phelps: We have no further questions.

Mr. Rashid: You may step down.

(Witness excused.)

Mr. Rashid: Mr. Erath.

Robert Erath, a witness called on behalf of the Government, being first sworn, was examined and testified as follows:

Direct examination.

By Mr. Rashid:

Q. Would you state your full name.

A. Robert Erath.

Q. Where do you live?

A. 98-50 Sixty-seventh Avenue, Forest Hills, Long Island, [fol. 541] New York.

Q. Where are you presently employed?

A. Kenyon & Eckhardt, Inc.

Q. What type of an organization is that?

A. it is an advertising organization, sir.

Q. How long have you been employed by that agency?

A. Seven and a half years.

Q. What is your present position at the agency?

A. I am space buyer on the Kellogg account.

Q. How long have you occupied the position of space buyer?

A. In the advertising business?

Q. That is correct.

A. I would say, roughly, thirteen or fourteen years, in total.

Q. And have you occupied the position of space buyer throughout your entire employment by Kenyon & Eckhardt?

A. Yes, sir.

Q. Would you tell us whether or not Kenyon & Eckhardt agency places general advertising in New Orleans newspapers at the present time?

A. Yes, sir.

Q. And did you tell us that the account they handled was Kellogg? Is that correct?

A. Kellogg is correct.

Q. And who in the agency handles the advertising for that account?

[fol. 542] A. Beg pardon?

Q. Who in the agency handles that advertising for Kellogg? Which individual in the agency?

A. You mean the accounts supervisor? Is that what you mean?

Q. No, the individual who handles the insertion of advertising space in newspapers.

A. I buy the space or make recommendations and then they, in turn—It is turned over to what we call a control department and they send out the necessary mats or plates or whatever may be called for.

Q. But you make the initial recommendation as to which newspapers you will use for Kellogg?

A. I make the recommendation, as far as print work is concerned.

Q. Can you tell us where Kellogg products are manufactured?

A. Yes. Battle Creek, Michigan.

Q. And where are they sold?

A. Throughout the United States and Canada.

Q. Are they sold in the State of Louisiana?

A. Yes, sir.

Q. Can you tell us of what value, if any, newspaper advertising in the City of New Orleans has in developing a market for the sale of Kellogg's products?

A. Well, the only way I can answer that is to say that over the years they have been a consistent newspaper advertiser, not only in the State of Louisiana, but in all states [fol. 543] throughout the country; however, it has been evident from experience that newspaper advertising has been one of their helpful media to be in.

Q. Could you tell us whether or not your agency sends advertising copy and/or mats to New Orleans newspapers for publication of advertising?

A. I believe that is correct; but, as I say, that is in another department called our control department.

Q. And could you tell us whether or not the agency or the manufacturer pays for the advertisements in the New Orleans newspapers?

A. There, again, it is another department, but I am pretty sure it is our accounting department. I believe they send the newspaper the check; and, in some cases, I believe there are representatives who bill for advertising and they are sent the check less the 15 per cent we receive as commission.

Q. Could you tell us what particular products of Kellogg's that you advertise in New Orleans newspapers?

A. For what period, sir?

Q. In 1949, let us say.

A. Well, in 1949, we had—I know of two products: One is All Bran and the other is Kellogg's Corn Flakes.

This is daily?

Q. That is correct.

Which newspapers in New Orleans were you using for the advertisement of those two products in 1949?

[fol. 544] A. In 1949, we were using the Item and the Times-Picayune on All Bran. The same applied to Corn Flak

Q. Could you tell us what newspaper or newspapers you used in the year 1950 for the advertising of those two products in New Orleans?

A. The same two papers.

In 1950?

Q. In 1950.

A. I haven't got it broken down fully, but on All Bran we used the Item, the Times-Picayune and States. The same went for the Corn Flakes.

Q. Do you know whether or not you had a contract with The Times-Picayune Publishing Company in 1949 for advertising?

A. We did, sir.

Q. Do you know when that contract expired?

A. I believe it was January 30 of 1950.

Q. Did you thereafter enter into a new contract with The Times-Picayune Publishing Company for advertising?

A. I believe we did, in view of the fact that lineage is run.

Q. Could you tell us whether or not at the time you began to use the New Orleans States for advertising of Kellogg's All Bran and Kellogg's Corn Flakes in 1950 you wished to use the States at that time?

A. Well, I will try to answer that this way: That I had not used the States, previously.

When the forced combination came into effect for the unit rate, which it is now being termed, we were automatically [fol. 545] an advertiser in the States; but we still stayed with the Item.

Q. Could you tell us whether or not the amount of

lineage that you took in the New Orleans Item in the year 1950 was the same as that which you took in the year 1949?

A. Well, on All Bran in the Item, the lineage was 3397. In 1950, it was 3854.

On Corn Flakes in 1949, the Item was 3110, and in 1950, 2422.

Q. Could you tell us what the reason or reasons were that occasioned the reduction in the amount of lineage in the Item with respect to Corn Flakes in 1950?

A. Yes. I think I can. By that time, our budget had already been made up and Kellogg Company works on a year basis.

There was, therefore, no further money made available and it was necessary to cut the lineage somewhat, in order to take care of the un[illegible] rate.

Q. Well, what determined which newspaper media you would cut in advertising in 1950?

A. It was the only, what we call flexible, media that was available. We were on radio; we were in magazines; and we were in Sunday comics; therefore, it was necessary to take it from that media.

Q. What I meant by the question was: What determined which of the three newspaper media you would reduce your lineage in?

A. Well, it was my opinion and feeling that, with the Times-Picayune and States, I would get good coverage, and that is the reason I left it in that way.

[fol. 546] Q. Could you tell us whether or not the unit rate of The Times-Picayune Publishing Company had any effect upon the decision?

A. No, sir.

Q. Based upon your experience as a space buyer for a number of years, what would be the order of your selection of newspaper media in the City of New Orleans for Kellogg's products?

A. It would all depend upon what the over-all media picture was.

Q. Will you explain that, please.

A. Well, in other words, we take this year, for instance, 1951, which we are coming into: We are going to be using the New Orleans Times-Picayune and States through This

Week and also the Item through American Weekly; so, therefore, you are already spending a lot of your money and you are reaching the same people that you want to reach, daily, so that you take your daily publication in line with what you have done heretofore.

The Court: I wonder if you would give me those figures again.

The Witness: Yes.

The Court: 1949. I missed some of them; '50, also.

The Witness: In 1949, the Item for All Bran was 3397 and for the Times-Picayune, 4829.

The Item for Corn Flakes in '49 was 3110 and the Times-Picayune, 3188.

The Court: All Bran for '50.

[fol. 547] The Witness: All Bran for '50 is 3854 and the Times-Picayune and States was 4414.

In the case of Corn Flakes for the Item, it was 2422 and the Times-Picayune, 3785.

By Mr. Rashid:

Q. Mr. Erath, what would you say would be your first selection for a newspaper media in the City of New Orleans for Kellogg's advertising? Which of the three newspapers in the City of New Orleans would you make as your first selection?

A. Well, there are not three papers available, are there?

Q. Of the papers that are available.

A. I think, with the unit rate, the New Orleans Times-Picayune and States would be the first.

Q. Prior to the time the unit rate went into effect with respect to The Times-Picayune Publishing Company, what was your selection, your first selection of a newspaper in the City of New Orleans?

A. Well, that is what I tried to explain before. The way I figured it was this way: The reason we went to the Item was that we were already in reach—At least, we thought we were reaching the State's audience through the Sunday comics and the Sunday supplements with our Kellogg messages, and that is the reason.

In 1950 and prior to that, the Item did not have the Sun

day newspaper; so, therefore, we complemented the Times-Picayune coverage.

Q. Did I understand you correctly to say that you were [fol. 548] using Sunday newspaper advertising in the City of New Orleans in 1949 to supplement the——

A. Comics in 1949?

Q. ——comics?

A. That is right, and in 1950, too.

Q. Mr. Erath, you stated that in 1949 your first selection of newspapers in the City of New Orleans was the Times-Picayune, daily? Is that correct?

A. Correct.

Q. What was your second choice?

A. My second choice?

Q. For a daily newspaper?

A. My second choice, because of what we had already put into the market, was the Item, because we already had charged the States' circulation to the district.

Q. Now, in 1950, what was your choice of a newspaper? Your first choice?

A. The same thing, sir.

Q. Your first choice was the Times-Picayune?

A. That is right.

Q. What was your second choice in 1950?

A. The Item.

Q. Well, could you explain, then, the particular reason why you added the States' advertising lineage to your schedule in 1950, when you did not have it in 1949?

[fol. 549] A. Well, it was a forced combination after January 30th.

Mr. Rashid: No further questions.

Cross examination.

By Mr. Phelps:

Q. Mr. Erath, as I understand your testimony, the Item had a slight loss on the Corn Flakes' account in '50 over '49?

A. That is correct.

Q. And they had an almost corresponding gain on All Bran in '50 over '49?

A. Yes, sir. That is right.

Q. In addition to that, on Variety Package, which is a Kellogg account, with which I assume you are familiar——

A. That is Sunday, sir.

Q. But the Item, which had never theretofore carried any lineage in 1950, carried 2186 lines, didn't it?

A. I think that is correct.

Q. So, they had a gain on Variety Package.

Pep is also a Kellogg account, isn't it?

A. That is right, sir.

Q. And that was exclusively comics in '48, '49 and '50?

A. That is correct.

[fol. 550] Q. Raisin Bran is also a Kellogg account, isn't it?

A. That is right. That was comics too, I think.

Q. According to my information it was comics in '49 and '50?

A. That would be right, I think.

Q. Raisin Bran has never used the Item, has it?

A. No, sir.

Q. In '48, '49 or '50?

A. No, sir.

Q. Grow Pup Dog Food is another Kellogg account?

A. That is correct.

Q. That has never used the Item either, has it, in '48, 1949 or '50?

A. Not to my knowledge.

Q. Are you familiar with the Lincoln-Mercury account which is handled by Kenyon & Eckhardt, Inc.?

A. No, sir.

Q. Are you familiar with the Mercury account?

A. That is the same, Lincoln-Mercury.

Q. They are listed differently in media records is the reason I asked.

A. They are the same thing.

Q. The P. T. Babbitt account on Swirl?

A. Not a thing.

Q. How about Borden Company on Instant Coffee?

A. We don't have the Borden coffee any more.

[fol. 551] Q. Bristol Meyers on Resistab?

A. I don't know anything about them, but I don't think they have been doing anything.

Q. Canadian-Pacific Railway?

A. No, sir.

Q. General Electric Air Conditioning?

A. No, sir.

Q. You mentioned that newspaper advertising was the only flexible medium, you meant within that particular year, didn't you?

A. Within that particular year, that is right.

Q. You actually reallocate your media budget periodically, don't you?

A. Not necessarily so. We are pretty much on a calendar year.

Q. I mean every calendar year you make a reallocation.

A. Yes, sir, that is right.

Q. So that you could make a reallocation to take care of any special situation at the end of each year, couldn't you?

A. Yes, sir.

Q. As a matter of fact, you would do that, wouldn't you?

A. That is right, Sir.

Q. Would you tell us when the Government first contacted you in connection with this lawsuit?

A. On March 20, 1951.

Mr. Phelps: We have no further cross-examination.

[fol. 552] (Witness excused.)

Donald W. Scandlin, called for and on behalf of the Government, after being sworn, was examined and testified as follows:

Direct examination.

By Mr. Rashid:

Q. State your name.

A. Donald W. Scandlin.

Q. Where do you live?

A. 15 Lincoln Terrace, Hillsdale, New Jersey.

Q. Where are you presently employed?

A. Roy S. Durstine.

Q. How long have you been employed there?

A. Since December of 1950.

Q. Where were you employed prior to that time?

A. Ted Bates & Company.

Q. What type of organization is the latter company?

A. Advertising Agency.

Q. What position did you occupy with the Ted Bates Company?

A. Space buyer.

Q. How long had you occupied that position at the Ted Bates Company?

A. Approximately nine months.

Q. Could you tell us whether or not, during the period of time you were employed by the Ted Bates Company, you were placing general advertising in New Orleans news-[fol. 553] papers?

A. We were.

Q. Could you tell us whether or not you were placing advertising for Fleischmann's Preferred Whiskey at that time?

A. I was.

Q. Where is that produced, in what state?

A. I am not sure. I think it is Kentucky.

Q. And where is it sold?

A. All over the country.

Q. Is it sold in the State of Louisiana?

A. It is.

Q. Could you tell us of what value, if any, newspaper advertising in the City of New Orleans has upon promoting the sale of that particular product?

A. It has always been very beneficial, newspaper advertising has, both here and throughout the country.

Q. Are you the individual in the Ted Bates Company who was responsible for the placing of advertising in New Orleans for Fleischmann's Preferred?

A. Yes, sir.

Q. Could you tell us what newspaper or newspapers were used in New Orleans for advertising that product in the year 1949?

A. We have two products. For Fleischmann's Preferred, we used the Item and the Times-Picayune, and on Gin, we used the Times-Picayune.

[fol. 554] Q. Would you tell us what newspaper or newspapers you used in New Orleans in the year 1950 for those products?

A. On Fleischmann's Preferred, we used the Times-Picayune and States, and we used the Item.

Q. Do you recall during what period of the year you used the Item for Fleischmann's Preferred in 1950?

A. In January of 1950.

Q. Did you use it at any other time in 1950?

A. No, sir.

Q. Would you tell us the particular reason or reasons that occasioned your discontinuance of the Item for advertising of Fleischmann's Preferred Whiskey in 1950?

A. Well, there is a little bit of background on it. We had been using the Times-Picayune and States in '48 and in 1949 we switched to the Item and the Times-Picayune. That was at the request of the Fleischmann Wholesaler down here in New Orleans.

In 1950, after the forced combination went into effect, we went back to our original selection of the Times-Picayune and the States.

Q. Well, was the unit rate of the Times-Picayune Publishing Company responsible for that switch in newspaper media?

A. Yes, partly.

Q. Could you tell us what newspaper or newspapers you used in the year 1950 on Fleischmann's Preferred Gin in the City of New Orleans?

A. We used—in 1950?

[fol. 555] Q. 1950.

A. The Times-Picayune and States.

Q. And as I recall, you used only the Times-Picayune in 1949, is that correct?

A. That is correct.

Q. Do you recall when the unit rate of the Times-Picayune Publishing Company went into effect with respect to Fleischmann's Preferred Gin?

A. Well, I am not sure, but I would assume it would be

February 1, 1950, when the forced combination went into effect.

Q. You are not sure, though, of the exact time?

A. I am not, no.

Q. Do you have figures there, monthly figures, for the year 1950 on Fleischmann's Gin?

A. I only know that—I only remember, rather, that we ran May through August.

The Court: Which paper?

The Witness: In the Times-Picayune and States.

Q. May through August of 1950?

A. That is right.

Q. Do you know of your own personal knowledge whether or not the unit rate of the Times-Picayune Publishing Company had any effect upon your selection of media for Fleischmann's Preferred Gin in 1950?

A. Will you please restate the question?

[fol. 556] (Question read by reporter.)

A. I am not quite sure how to answer that, but I know that we wanted additional coverage in New Orleans, which is why we used the Times-Picayune and States.

Q. Well, you didn't quite answer the question. I wanted to know whether the unit rate had any effect upon your selection——

Mr. Wilson: I thought the question was very well answered. I object to his statement.

The Court: The objection is overruled.

A. I am still not quite sure how to answer that.

Mr. Phelps: May I ask that the original question and the witness' answer be read at this time?

The Court: Very well.

(Question and answer read by reporter.)

The Court: That still doesn't answer the question. What effect, if any, did the unit rate have on the selection of the States, if you can answer it?

The Witness: Well, of course, there is a rate differential there.

The Court: You said you wanted additional coverage.

The Witness: We wanted additional coverage in the market there.

The Court: All right. Take it up from there. Had it not been for the unit rate, would you have obtained that additional coverage in the States or would you have obtained it in the Item?

[fol. 557] The Witness: No, I would have obtained it in the States, because we had been buying the Times-Picayune and the States for some time.

Q. Did I understand you correctly a short time ago to say that in 1949 you were purchasing the Times-Picayune and the Item on Fleischmann's Gin?

A. That is correct—no, not on gin.

Q. On Preferred?

A. On Preferred.

Q. How about on gin?

A. We were buying the Times-Picayune.

Q. Only?

A. Yes, Sir, only.

Q. Well, you stated just now that you had been buying the Times-Picayune and the States for some time.

A. On most of our products we had been.

Q. Well, I am speaking about Fleischmann's Preferred Gin at the present time.

A. Fleischmann's Gin, we bought the Times-Picayune and the States in 1948.

Q. In '49?

A. We bought the Times-Picayune.

Q. And in '50?

A. The Times-Picayune and States.

Q. And my question now is whether or not the unit rate [fol. 558] in the Times-Picayune Publishing Company in 1950 had any effect upon your adding the States to your schedule for Fleischmann's Preferred Gin in 1950.

A. No, I don't think that it does, or it did.

Q. Does your basis for the selection of newspaper media differ with respect to each product, or is it the same for all products?

A. It differs with respect to products and also other factors.

Mr. Rashid: No further questions.

The Court: Along those lines, will you tell us why you selected two newspapers in 1950—or 1949—for the whiskey, but only one newspaper for the gin?

The Witness: Well, the gin was a budget proposition and we wanted the strongest paper, so we used the Times-Picayune on the Preferred. I mentioned before that the wholesaler in New Orleans had wanted the use of the Item together with the Times-Picayune.

The Court: I see.

Cross-examination.

By Mr. Phelps:

The Court: Will your examination be long?

Mr. Phelps: I think not, your Honor, not over five minutes, but whatever your Honor wishes——

The Court: Proceed.

Q. Mr. Scandlin, according to my information, in 1945, you were buying the combination Times-Picayune and States on Preferred. Would your recollection go back that far?

[fol. 559] A. No, sir, it wouldn't, and I was not buying on Preferred at that time.

Q. You haven't checked the agency's records to see, however?

A. No, I haven't gone back that far.

Q. You only know that your agency normally uses the combination and has for many years, is that correct?

A. I believe so.

Q. And as I understand your testimony, the selection of the combination was your agency's best judgment, but that judgment was countermanded through some local influence on a temporary basis. Is that a fair statement?

A. Yes, I would say so.

Q. When the combination rate went in, that local pressure or influence no longer had any effect on your agency's good judgment?

A. Yes—will you repeat the question.

Q. Well, I will rephrase it, maybe a little better. When the unit rate went in, your agency's judgment as to what

was the best buy could then be carried out without any undue pressure from local influence?

A. Yes.

Mr. Rashid: If the Court please, I move that the word "undue" be stricken from the record. There was no testimony that pressure was undue. It was a recommendation from the distributor.

Mr. Phelps: I accept that amendment. Will you leave [fol. 560] the question in its present form but strike the word "undue", if the Court will permit it.

The Court: Very well.

Q. There is a pretty wide variety of selection among space buyers for whiskey products isn't that true? I mean, you exercise a wide variety of judgment as to what is the best particular buy? Do I make myself clear?

A. You have to, yes.

Q. Would you tell us when you were first contacted by the Government for this case?

A. I believe it was around the end of March.

Mr. Phelps: That completes our examination, your Honor.

Mr. Rashid: We have nothing further.

(Witness excused.)

The Court: The Court will recess until twenty minutes to four.

(Short recess.)

Edward Klein, a witness called by and on behalf of the Government, after being sworn, was examined and testified as follows:

Direct examination.

By Mr. Rashid:

Q. What is your name?

A. Edward Klein.

[fol. 561] Q. Where do you live?

A. 6 West 77th Street, New York City.

Q. Where are you presently employed?

A. The advertising agency of Storm and Klein, New York City.

Q. How long have you been employed by that agency?

A. Under its present management, with a few changes, since 1929.

Q. What position do you occupy at the present time with that agency?

A. I am the Executive Vice-President.

Q. How long have you held that position?

A. For the last two years, and prior to that I was Vice-President.

Q. What type of an organization is Storm & Klein, Inc.?

A. Advertising ageney.

Q. Would you tell us whether or not your agency places general advertising in New Orleans newspapers at the present time?

A. Yes, sir, they do.

Q. Tell us whether or not they place general advertising for a product known as Tintex?

A. That is correct.

Q. What type of product is that?

A. It is a household dye.

Q. Tell us who in the agency handles that particular [fol. 562] advertising account?

A. I do, in conjunction with my partner.

Q. Where is that product manufactured? Do you know?

A. New York City.

Q. And is it sold in the State of Louisiana?

A. Yes, sir.

Q. Is it sold throughout the country?

A. Yes, sir, it has national distribution.

Q. Would you tell us what value, if any, newspaper advertising in the City of New Orleans has upon promotion of the sale of that product?

A. It has quite a bit of value.

Q. Would you explain it, please?

A. Well, in order to bring the merits of the product to the attention of people, we use newspaper advertising in conjunction with other media too.

Q. What newspaper or newspapers were you using in New Orleans in the year 1949 for Tintex advertising?

A. In 1949, we were using the Times-Picayune and also the Item.

Q. What newspaper were you using in the year 1950 in the City of New Orleans for your Tintex advertising?

A. Times-Picayune and the Item.

Q. That is for the year 1950?

A. Yes, sir.

[fol. 563] Q. Were you using any other newspapers other than those two in the year 1950?

A. I beg your pardon, yes, sir. Starting in February of 1950 we also used the States.

Q. Were you using the daily New Orleans Item throughout the year 1950?

A. No, sir.

Q. When did you last use it in the year 1950?

A. April.

Q. Did you have a contract with the Times-Picayune Publishing Company in the year 1949 for advertising?

A. I assume so. We have contracts with every newspaper in which we use space.

Q. Can you recall the approximate date when that contract expired?

A. I haven't the slightest idea.

Q. Do you have a contract at the present time with the Times-Picayune Publishing Company?

A. Yes, sir.

Q. Do you recall when that contract began?

A. No, sir. These contracts are made whenever we start advertising in any newspaper, and if we continue using the paper, we renew them each year at the same time. If we start on February 16, we renew it on February 16 of the following year.

Q. Did you ever receive an announcement from the [fol. 564] Times-Picayune Publishing Company of the adoption of the unit rate in the year 1950?

A. I assume so. I don't recall it definitely.

Q. Did you know that a unit rate had been adopted by the Times-Picayune Publishing Company in the year 1950?

A. Yes, sir.

Q. When did you first learn of it?

A. Either through the mail, or it might have been called to my attention by one of my assistants.

Q. Would you tell us whether or not the unit rate of the Times-Picayune Publishing Company had any effect upon your selection of the New Orleans States for Tintex advertising in the year 1950?

A. Naturally.

Q. Could you tell us what effect it had?

A. Well, the mere fact that it was put in as a forced combination made it imperative that I use it—not imperative, but it was there, and I had to use it.

Q. Could you tell us whether or not you would have used the space for that advertising if it had not been for the unit rate?

A. That is a hypothetical question. I probably would not have.

Mr. Rashid: No further questions.

Cross examination.

By Mr. Phelps:

Q. Mr. Klein, isn't it a fact that just about the time you [fol. 565] went out of the daily Item, you went into the American Weekly in the Sunday Item?

A. That is right.

Q. Wasn't your feeling that that gave you sufficient coverage through the Item in New Orleans?

A. That is correct.

Q. So that you no longer had any need for the daily Item within your budget limitations?

A. At that particular time, that is right.

Q. You are still using the Item through The American Weekly, aren't you?

A. That is right.

Q. As a matter of fact, the Item had a very substantial gain in lineage in '50 over '49 if you include the Sunday figures, isn't that true?

A. I don't know.

Q. Are you familiar with the Park & Tilford account which is one of your agency's accounts?

A. Yes, sir, very well.

Q. Is Kentucky Brand one of those accounts?

A. Yes, sir.

Q. That account was exclusively in the Item in 1950, wasn't it?

A. Yes, sir, that is correct.

Q. As a matter of fact, Park & Tilford accounts, with the [fol. 566] exception of Kentucky Brand, have never used the Item daily or Sunday in '48, '49 or '50, have they?

A. I do not have the '48 figures with me. The whiskey products were not advertised in the Item during '49 or '50 with the exception of Kentucky Brand in the month of June, I believe, 1950.

Q. Are you familiar with the Park & Tilford account on perfumes and cosmetics?

A. Yes, sir.

Q. According to my information, that account during '48, '49 and '50 has never used the Item except through The American Weekly. Does that check with your information?

A. Again I can't answer you about '48, but '49 and '50, that is correct.

Q. That the Item did have a gain of 706 lines in the year '50 over '49 in The American Weekly?

A. If that is the space we used, that is right.

Q. Are you familiar with the Vat 69 account of William Sanderson & Son, Ltd.?

A. That is one of my accounts, yes, sir.

Q. According to my information, that account used the Times-Picayune in 1949 but no newspaper space in New Orleans in 1950. Does that check with your information?

A. Yes, sir.

Q. When were you first contacted by the Government in connection with this lawsuit?

[fol. 567] A. Several weeks ago. I don't recall the exact date.

Mr. Phelps: We have no further examination.

(Witness excused.)

CORNELIUS B. DONOVAN, a witness called by and on behalf of the Government, after being sworn, was examined and testified as follows:

Direct examination.

By Mr. Rashid:

Q. State your full name, please.

A. Cornelius B. Donovan, 122 Hoover Road, Yonkers, New York.

Q. Where are you presently employed?

A. Charles W. Hoyt Company, Inc.

Q. What type of an organization is that?

A. General advertising agency.

Q. How long have you been employed by that agency?

A. Forty years.

Q. What is your present position with the agency?

A. Vice-President and Director.

Q. How long have you held that position?

A. The last ten years.

Q. Would you tell us whether or not your agency places general advertising in the City of New Orleans in newspapers?

A. They do.

Q. At the present time?

[fol. 568] A. They do.

Q. Would you tell us whether or not your agency places advertising in New Orleans newspapers for 666 products?

A. Correct.

Q. Could you explain, please, what 666 products are?

A. It is a malaria and a cold cure, manufactured by the Monticello Drug Company of Jacksonville, Florida.

Q. Is it manufactured at that place?

A. That is correct.

Q. And where is it sold?

A. Fairly nationally, but primarily heavy in the South and Southwest.

Q. Is it sold in the State of Louisiana?

A. Yes.

Q. Could you tell us of what value, if any, newspaper advertising in the City of New Orleans has upon the promotion of the sale of that product?

A. Well, as applied to New Orleans, the value of newspaper advertising is reflected in all sections of the country. New Orleans is no better, I suppose, than any other city. We think it is profitable to use newspapers.

Q. Could you tell us who in the agency handles the advertising for this particular account?

A. I don't know quite how to answer that. Do you mean who directs the account or who buys the space for the account?

[fol. 569] Q. Well, let's say who buys the space under the account?

A. Miss Kilgaloen.

Q. And what duties do you have in connection with this account?

A. Supervising the purchase and selection of all media, recommendation of all media.

Q. Would you tell the Court what newspaper or newspapers you were using in the City of New Orleans for 666 products advertising.

A. Unfortunately, I didn't bring any records down with me, but as I recall it, in 1949, we were using all three papers.

Q. What were you using in 1950?

A. In 1950 we also used all three papers.

Q. Do you recall whether or not you were using all three newspapers throughout the entire year of 1949?

A. That, I couldn't answer.

Q. Do you recall whether or not you were using all three newspapers throughout the year 1950?

A. Not without my records in front of me, but I will say this: that possibly we did.

Q. Did you have a contract with the Times-Picayune Publishing Company in the year 1949?

A. We had contracts with all the papers.

Q. Do you know whether or not you had a contract with the Times-Picayune Publishing Company in 1949?

A. Yes, sir.

[fol. 570] Q. On 666 products?

A. Correct.

Q. When did that contract expire?

A. That is laid up on a calendar basis, and it possibly might have expired in December, 1950.

Q. Do you recall whether or not you entered into a new contract after that for the Times-Picayune Publishing Company?

A. After what?

Q. After the old contract expired.

A. You mean January of 1951?

Q. Yes.

A. Yes. It is automatic. We would, yes.

Q. Do you know whether or not you have ever received an announcement of the unit rate combination of the Times-Picayune Publishing Company in 1950?

A. It is of record in our office. We did receive it.

Q. Do you know that such a unit rate had been adopted by the Times Publishing Company?

A. Yes, sir.

Q. When did you first learn of it?

A. When my secretary came in with the mail and showed it to me.

Q. Approximately when was that?

A. I think it was some time in November, but possibly the early part of December.

[fol. 571] Q. In the year 1950—1949?

A. 1949.

Q. Will you tell the Court whether or not the unit rate of the Times-Picayune Publishing Company has had any effect on your pattern of advertising in newspapers in the City of New Orleans?

A. Not the slightest.

Mr. Rashid: If the Court please, the Government claims surprise, and I would like to lay a foundation for cross-examination.

The Court: Very well.

Cross examination.

By Mr. Rashid:

Q. Mr. Donovan, did you ever speak to a Government Attorney in connection with this case?

A. Yes, you.

Q. Do you recall approximately when that was?

A. About six or seven weeks ago.

Q. Do you recall where the conversation took place?

A. In my office.

Q. Do you recall who was present at that time?

A. My secretary.

Q. Do you recall my asking you about the different newspapers you used in the City of New Orleans in the year 1949 and '50?

A. I showed you the records.

Q. Do you recall my asking you the reason or reasons for [fol. 572] any change in your advertising pattern in the City of New Orleans in newspapers?

A. I showed you the records.

Q. Would you answer the question, please?

A. I showed you the records. That is the only comment I have to make.

Q. Do you recall my asking you about your pattern of advertising in New Orleans?

A. Not necessarily. When you and I discussed the records for 1949 and 1950, I drug them out of the files and you looked at them. All three papers were used.

Q. Do you recall my asking you any questions at that time with respect to your advertising in New Orleans?

A. No, because I showed you the records. That spoke for itself.

Q. Do you recall that you told me that the forced combination of the Times-Picayune Publishing Company has cut down your advertising lineage in the Item?

A. Unfortunately, I have not got in front of me the records, but I think it is quite the contrary, if my memory—I am depending entirely on my memory now. You and I went over the records. In 1949 all three papers were used. In 1950 the Item, as I remember it, was cut slightly, but the Times-Picayune and States was cut quite severely from 1949. Media records will show that if you have the records here.

Mr. Rashid: Would you read the question, please?

[fol. 573] (Question read by reporter.)

A. No.

Q. Do you recall telling me during that interview that

the unit rate combination has required you to take the States against your wishes?

A. May I answer that, your Honor, by saying no, and then an explanation with it?

The Court: Yes, certainly.

A. (Continued) You and I discussed this suit across the table and I told you that the first combination in this country was a joke, because there is one hundred eighty-eight newspapers a day pursuing it. This, to me, was just one of a hundred and eighty-eight, and we buy forced combinations in one hundred and eighty-eight cities in this country and don't use other papers in the same city because, primarily, we are buying the best buy we can in the city regardless of whether it is combination or not. That, in substance, was what I told you.

Q. Do you recall telling me that in 1950 when the unit rate went into effect, you were forced to add States in February, 1950, but would not otherwise have done so?

A. I can't say what you have got down in writing, Mister. You and I talked across the desk, and I will ask you now, did you look at the records that I showed you for '49 and '50 and——

The Court: Just a minute. I don't see how this witness could have made that statement in the face of the fact that he was already putting advertising in the States in 1949. [fol. 57] Mr. Phelps: If the Court please, as a matter of fact, the records show that——

The Court: Just a minute, just a minute.

Mr. Phelps: I beg your pardon, Sir.

The Court: The witness has testified that he used all three papers in 1949. How can you say—how can he be alleged to have said that he started using the States because of the unit rate which did not go into effect until 1950?

Mr. Rashid: If the Court please, the witness told me in New York——

The Court: No testimony, but I just wondered what your explanation is.

Mr. Phelps: May I be heard?

The Court: Yes.

Mr. Phelps: According to media records, the Times-

Picayune lost 1190 lines in '50 over '49; the Item lost only 537 lines in '50 over '49. So that the witness' statement is entirely correct in accordance with media records, and I believe that further examination along these lines is very useful.

The Court: You will have an opportunity to examine him.

The Witness: Your Honor, the Times-Picayune lost business. The Times-Picayune was cut down in 1950 in relation to the increased costs in the paper.

Q. The Times-Picayune?

[fol. 575] A. The Times-Picayune suffered a greater loss than the Item.

The Court: You asked, did the unit rate cause a reduction in the lineage of the Item. As a matter of fact, the lineage of the Picayune was cut more than the lineage in the Item.

The Witness: Your Honor, unfortunately, I did not bring my records because they were shown across the desk to this gentleman, and he is quite aware of the fact that in 1949 the three papers were used. The statements he makes in questioning my integrity, I don't think are suitable here.

The Court: Well, if he asks you a question and asks if you said that, if you didn't say it, just say so. That is all you have to do.

A. The answer is no.

Q. Mr. Donovan, do you remember telling me that in the winter of 1948 and '49, you used all three newspapers in New Orleans——

Mr. Phelps: If the Court please, I don't see where that is contradictory of anything that the witness has testified to. I object to the question.

The Court: Overrule the question.

A. When this man came into my office, he asked me to produce records, and as far back as I could go, I gave him these records, which I think incorporated 1949, 1950 and 1951. The records of 1947 and 1948 were not available, so I could not have made that statement.

[fol. 576] (Bench conference.)

By Mr. Rashid:

Q. Mr. Donovan, I hand you a tabulation taken from Media Records of your lineage on 666 products for the years 1949-50 and the first three months of '51. Would you look at that and see whether that is accurate?

A. I assume it is; yes.

Q. Would you look it over carefully?

A. Well, I had nothing to do with making this schedule up, incidentally, so I assume these are Media Record figures, so I accept them as accurate.

Q. You will notice in there, in the winter of 1949, and '50, you were using the Item exclusively for daily newspaper advertising. Is that correct?

Mr. Phelps: If the Court pleases, is this schedule verified and if so by whom?

A. That is incorrect.

Mr. Wilson: If it is incorrect, that statement is wrong.

A. We did not use the Item exclusively in 1949.

By Mr. Rashid:

Q. I said the winter of 1949, and '50.

A. '49 and '50.

Q. The winter of '49 and '50.

A. When do you regard winter as beginning?

A. We have two schedules: Malaria and Cold.

[fol. 577] Q. When do you prepare your winter schedules, for which particular months?

A. This particular account, by the way, the newspaper list is made up by the account executive, who is also a part owner of the business.

Q. Would you tell us what months of the year are covered by your winter schedule?

A. Well, up in New York you start in about October 1st through March.

Q. October through March.

A. That is right.

Q. Now, starting in October of 1949, through March of 1950, what newspapers were you using in New Orleans for your advertising on 666 products?

A. Will you repeat that?

Q. Starting in October of 1949, and continuing through March of 1950, what daily newspapers were you using in New Orleans for 666 advertising?

A. The Times-Picayune and States and the Item.

Q. You were using the Times-Picayune from October '49 until March of '50?

A. These are your figures here (indicating document); Yes. I am reading from your own figures.

Mr. Wilson: If the Court please, I object to further cross examination of this witness. He claims surprise; he has [fol. 578] produced the figures; the figures substantiate what the witness said on the stand, and now he is trying to impeach the witness, on some basis which I do not understand. I object to any further examination.

A. Your Honor, here is the paper.

The Court: Apparently he is trying to impeach the figures, too.

Mr. Kramer: No, Your Honor. The Times-Picayune and States column is the Sunday paper, and we are asking about daily newspaper advertising.

A. I am taking your own sheet. I have no figures, unfortunately; I did not bring them down.

Mr. Phelps: If the Court please, may we have a statement from Government counsel as to the manner in which these figures impeach the testimony of the witness?

Mr. Wilson: If the Court please, I object to further examination of the witness. There is nothing further to examine him on. They have gotten the evidence; the evidence is perfectly clear. Now they are apparently trying to impeach their own witness.

The Court: That is what they set out to do when they pleaded surprise and asked for the right to cross examine.

Mr. Wilson: Now they put the figures in and there seems to be nothing inconsistent. It is merely repetitious.

The Court: Proceed. I will overrule the objection.

By Mr. Rashid:

Q. Now, will you tell us what daily newspapers you were [fol. 579] using from October, 1949, until March of 1950 in the City of New Orleans, for 666 products?

A. Times-Picayune, the States and the Item.

Q. Daily newspapers.

A. Daily newspapers.

Q. Is that what is reflected on the schedule?

A. No, Sundays that I see here, incidentally. That is daily (indicating document), Judge.

Q. This is the Times-Picayune daily; this is the Times-Picayune Sunday: Sunday and daily.

A. Oh; I'm sorry.

The Court: As I understand the situation this witness has testified that the unit rate had absolutely nothing to do with the advertising pattern in New Orleans on three-sixes. Now, he has been confronted and he has been asked, did he not make a contrary statement on a previous occasion. Do these figures establish in any way he made the very statement on a previous occasion?

Mr. Rashid: If I can draw out a few more questions, Your Honor, they do.

The Court: Is this still on cross examination, or are you examining him as your witness?

Mr. Rashid: No, Your Honor. I am trying to cross examine him on a conference I had with him in New York.

The Court: Suppose you get on with that.

[fol. 580] By Mr. Rashid:

Q. Mr. Donovan, do you recall telling me in New York that in the winter of 1949 and '50 you used only the Item newspaper for daily advertising in New Orleans?

A. I will answer that question by going back and telling you that you saw the records. They spoke for themselves, and I insisted you look the records over.

Q. Would you read the question?

A. How could I say that when we ran in all three papers?

Q. Do you recall telling me that in New York?

A. Not to my recollection; no. I thought that the records spoke for themselves.

Q. Mr. Donovan, have you ever discussed your testimony with any employee of the Times-Picayune Publishing Company since I saw you in New York?

A. My testimony? I sat with the lawyer this morning, Mr. Phelps. Is that the name?

Mr. Phelps: That is correct.

By Mr. Rashid:

Q. Did you discuss your testimony with him?

A. I did not; no.

Q. Did you discuss it with anyone else employed by the Times-Picayune Publishing Company?

A. Testimony? No.

Q. Did you discuss this case at all with anyone employed [fol. 581] by the Times-Picayune Publishing Company?

A. You mean the case itself?

Q. Yes.

A. Oh, sure.

Q. When was that?

A. Mr. Kelley came into my office one day.

Q. When?

A. About five or six weeks ago. With the clear understanding that it was with the wishes of his lawyer, and the Government lawyers. I asked him that question. There was no discussion about the case, however, beyond the fact that, was I going down? I told him, "Yes;" I had been subpoenaed. I asked him was he going down.

Q. Was that before or after you had talked with me?

A. That was after you came in.

Q. Did you discuss the case with anyone else employed by the Times-Picayune Publishing Company?

A. No. As a matter of fact, to be honest, I sat with two of them last night and I refused to discuss it; and they brought it up and said not to discuss it.

Mr. Rashid: No further questions.

Cross examination.

By Mr. Phelps:

Q. Mr. Donovan, the conversation, or the meeting that you had with me this morning was at breakfast, wasn't it?

A. That is correct.

[fol. 582] Q. And there were about seven men present at that time, were there not?

A. I think it was seven.

Q. It was a breakfast conference,—

The Court: Don't spend any more time on that. You have a right to talk with the lawyers on either side.

Mr. Phelps: If the Court will permit me, I would like to have the record show that I made inquiries of these men as to the particular accounts which the Government was interested in, and that beyond that there was no discussion as to what the witnesses would testify to.

Q. Is that correct?

A. You did not ask me that.

Mr. Kramer: The Government intended to suggest no impropriety from the fact that this witness had a conversation or a discussion with the counsel for the defendants, and never will make any such statement.

Mr. Phelps: Thank you.

By Mr. Phelps:

Q. Are you familiar with the B. C. Remedy account?

A. Yes.

Q. That account is a consistent advertiser in the Times-Picayune morning and evening edition?

A. To save the Court's time, I have nothing to do with that. We did not handle that account. We didn't handle [fol. 583] that end of it. We did not handle it outside of New York.

Q. You don't know what the lineage figures are in New Orleans?

A. Not at all.

Q. Are you familiar with the Charles B. Knox, Gelatin account?

A. Yes, sir.

Q. That is a Sunday advertiser, is it not?

A. Sunday supplements.

Q. Sunday supplements?

A. Yes, sir.

Q. Are you familiar with the Gilbert Hall of Science account?

A. Yes. That is comic.

Q. I think the Gilbert Hall of Science account and the Knox Gelatin account both used Sunday papers in New Orleans in 1950, didn't they?

A. One used the supplement and one used the comic section, sir.

Q. Hayward Wakefield Company, Gardner, Massachusetts; do you know that account?

A. Yes.

Q. They used the American Weekly exclusively in New Orleans in 1950, didn't they?

A. I think they did; one or two small ads.

Q. Nels Food Corporation, Inc.; Pen-Peach Blend Corporation?

A. Yes.

[fol. 584] Q. According to my information they used This Week exclusively in New Orleans, in 1950. Does that check?

A. That is correct. As a part of a group.

Mr. Phelps: We have no further questions.

(Witness excused.)

Mr. Rashid: At this time I would like to read into the record two depositions, a portion of them: one of Vance D. Hicks, taken in New York, April 12th. The other is the deposition of Phillip Marcuse that was taken in Detroit on April 16 at 2:00 o'clock in the afternoon.

Mr. Wilson: If the Court please, just to expedite this phase; there are three other depositions taken. If Mr. Rashid does not propose to offer them as part of his case, we will offer them as part of ours but since the Government took them, I suggest you read them all.

Mr. Rashid: The Government plans to read only these two at this time.

How does Your Honor wish us to proceed?

The Court: Whatever is more convenient to the Reporter.

The Reporter: It is satisfactory any way counsel prefers.

(Mr. Rashid proceeded to read the deposition, as follows:

VANCE D. HICKS, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

[fol. 585] Direct examination.

By Mr. Rashid:

Q. State your name, please?

A. Vance D. Hicks.

Q. Where do you reside, Mr. Hicks?

A. Temporarily on Valley Road, New Canaan, Connecticut.

Q. What is your present occupation?

A. I am a space buyer for Young & Rubicam, Inc.

Q. What type of organization is that?

A. An advertising firm.

Q. How long have you been employed by that agency?

A. I believe this is my thirteenth year.

Q. Were you employed at all times by the Young & Rubicam agency here in this city, or were you employed by Young & Rubicam in another office?

A. No. I was hired in New York, I believe, in December 1938, and then in March, or May, rather, of 1948, I was transferred to their Detroit office. I left their Detroit office on March 26, 1951, and I am now back in the New York office.

Q. Do you know whether or not the Young & Rubicam advertising agency does advertising for Packard cars in the New Orleans market?

A. It does.

Q. Are you the individual who was in charge of handling the advertising for that particular account?

A. I was, yes, as far as media were concerned.

Q. Were you handling the advertising for Packard auto-[fol. 586] mobiles in the years 1949 and 1950?

A. Yes.

Q. Mr. Hicks, does your agency, that is, Young & Rubi-

cam, make the decision as to which newspapers it will use in the New Orleans market for Packard advertising?

A. We make recommendations to the client as to which newspapers should be used. Our recommendations are always subject to client approval.

Q. Does the client disapprove your recommendations frequently or rarely?

A. No. I would say that in the majority of cases the client goes along with our recommendation.

Q. To the best of your knowledge, Mr. Hicks, what newspapers were used in the New Orleans market for Packard advertising in the year 1949?

A. We used the Times-Picayune and we used the Item, the New Orleans Item.

Q. What newspapers are you using at the present time in the New Orleans market for Packard advertising?

A. At the present time we are using The Times-Picayune and The States.

Q. Could you tell us what particular reason or reasons were responsible for the change of pattern in your advertising in New Orleans between 1949 and 1950?

A. Yes. At the end of 1949 we felt that it would be im- [fol. 587] possible for us to spend as much in the New Orleans market in 1950 as we had in 1949. Therefore, the decision was made and approved by the client to drop the Item from our advertising schedule and use only The Times-Picayune until such time as sufficient funds became available to again use two newspapers or three newspapers, as the case may have been, to accomplish what we were trying to do.

Q. You say this occurred in December, 1949?

A. Yes.

Q. Had you at that time received any announcement from The Times-Picayune Publishing Company of a change in the type of advertising contract they were going to use for general advertising?

A. I can't answer that because I don't know when—I don't recall when their announcement went out.

Q. Do you recall whether you yourself knew at the time that you made this change in your advertising pattern of

that announcement of The Times-Picayune Publishing Company?

A. I think I did but I can't be sure.

Q. Do you recall whether or not the announcement of the new advertising contract or general advertising had any effect upon your decision as to which newspapers you would use in New Orleans?

A. No. I had a job to do, a retrenchment job, and therefore I bought only The Times-Picayune. It seems to me that I must have known of the forced combination at that time because, as I look at my records, I can say that I knew we would not have to go into the forced combination until the expiration of our contract with The Times-Picayune [fol. 588] which expired on October 14 of 1950.

Q. You stated, Mr. Hicks, that in December while you were using The Times-Picayune and the Item, you decided to change and use The Times-Picayune only?

A. Yes, that is right.

Q. For how long a period of time did you use The Times-Picayune only for your advertising?

A. Well, I used The Times-Picayune exclusively through September, through our advertising which ran for the week of September 25.

Q. 1950?

A. 1950; with the exception of our announcement copy for our new model which ran on September 11th; we did place an ad in The Item at that time.

Q. Do you recall when your contract, your 1949-1950 contract with The Times-Picayune Publishing Company expired?

A. It expired October 14, 1950.

Q. When did you start using The States in 1950?

A. For our advertising week of October 16th.

Q. And I take it that the forced combination advertising contract went into effect with respect to Packard automobiles on October 14, 1950, or soon thereafter?

A. October 15th.

Q. October 15th. At the time that you entered into a new contract with The Times-Picayune Publishing Company, in October 1950, did you wish to use The States as an advertising medium for Packard automobiles?

[fol. 589]

Mr. Wilson: I object to that question. It is not a question of fact but a question of opinion. It calls for his conclusion as to what he was thinking about at the time, is not relevant or material to the issues in this case.

The Court: The objection is overruled. The question may be answered.

A. I don't believe that I would have used either The States or The Item for the remaining three months of the year.

Q. Could you tell me then why you added The States to your advertising list in New Orleans in October 1950?

Mr. Wilson: Same objection to the question. The question calls for speculation, not subject to any proof of the facts. It would be sheer speculation.

The Court: Overruled. It may be answered.

A. That was the only way we could purchase The Times-Picayune at that time; we had to buy The States with it.

Q. Mr. Hicks, what newspapers are you using for Packard advertising at the present time in New Orleans?

A. The New Orleans Times-Picayune and The States.

Mr. Rashid: If Your Honor please, that is all the deposition the Government wishes to offer.

Mr. Phelps: Do I understand that only a portion of the deposition is being offered, Mr. Rashid?

Mr. Rashid: That is correct. I will show you the part [fol. 590] that is not being offered.

(Counsel confer.)

Mr. Phelps: If the Court please, there is only one question and one answer that I would like to have included within this deposition. The question is

"By Mr. Rash' :

Q. I ask you again, Mr. Hicks, is The States a separate newspaper from The Times-Picayune?"

Mr. Wilson made an objection to the question. The objection appears for several pages, but I think counsel will agree with me that basically the objection is that it is a matter of fact and not a matter of opinion.

Mr. Kramer: We hope you will sustain the objection.

The Court: I take it the objection is withdrawn?

Mr. Phelps: The objection is withdrawn at the present time.

May I read the answer?

The Court: Yes.

Mr. Phelps: The answer: "We purchased The Times-Picayune and States as a unit. We didn't purchase them as separate newspapers.

Mr. Rashid: If the Court please, I would like to read into the record, on page 8, the first question on the page:

"Is The States a separate newspaper from The Times-Picayune?

[fol. 591] Mr. Phelps: Same objection."

Mr. Phelps: I withdraw that objection, if Your Honor please.

Mr. Rashid: "Answer. In my opinion, it is.

(Mr. Rashid proceeded to read the deposition, as follows:

PHILLIP MARCUSE, was thereupon called as a witness on behalf of the plaintiff and, having been first duly sworn by the Notary Public to tell the truth, the whole truth and nothing but the truth, testified as follows:

Direct examination.

By Mr. Rashid:

Q. Will you state you full name, please?

A. Phillip Marcuse.

Q. Where do you reside?

Q. Detroit, Michigan.

Q. Could you give us the address?

A. 2050 Glynn Court.

Q. What is your present occupation, Mr. Marcuse?

A. A partner and stockholder in Marcuse Advertising Agency.

Q. Could you tell us whether or not your Agency has

handled the advertising for Seroil Laboratories in the City of New Orleans in the years since 1949 to the present time?

A. Starting July 1, 1949.

[fol. 592] Q. Until the present time?

A. Yes.

Q. Would you tell us what newspapers you were using in the City of New Orleans for Seroil advertising in the year 1949 after you took over the account?

A. My recollection is that we used the Times Picayune and the Item.

Q. Could you tell us what newspapers you are using at the present time in New Orleans for Seroil advertising?

A. The Times-Picayune and States.

Q. Could you tell us the particular reason or reasons that occasioned your discontinuance of the Item as an advertising medium for Seroil in the City of New Orleans?

Mr. Phelps: We object to that on the ground that there is nothing in the record to indicate there was any indication for it.

The Court: Overruled.

A. We were using the Times-Picayune and the Item and then the Times-Picayune went into a forced combination with the States, I believe, and we didn't have enough money to run in the forced combination and the Item, so we went into the Times-Picayune and States.

Q. Does your agency make the decision as to which newspapers in the City of New Orleans, it will use for Seroil advertising?

A. Yes."

Mr. Rashid: That is all the depostion the Government wishes to offer, Your Honor.

[fol. 593] Mr. Phelps: Would it be appropriate to offer the cross examination at this time?

The Court: Yes.

(Mr. Phelps proceeded to read the deposition, as follows:

"Cross examination.

By Mr. Phelps:

Q. Do you recall when you changed over from the use of the Times-Picayune and Item to the Times-Picayune and States?

A. I am not positive, but I think it was in February of 1950.

Q. That was several months in advance of the time when the unit combination went into effect on the Seroil account, wasn't it?

A. I don't know.

Q. I understood you to testify you switched over because of the combination.

A. Where did I testify there?

Q. Your testimony is you don't know whether you switched over at the time that the combination went into effect on the Seroil account?

A. Will you ask me again?

Q. Yes. Did you change over to using the Times-Picayune and States at the same time that the unit combination rate went into effect on the Seroil account?

A. It is my recollection that the forced combination went into effect the month we changed over. I don't know if I am correct in that or not. Am I?

Q. You are supposed to be answering the questions. As a [fol. 594] matter of fact, you are using the Item at the present time, are you not, Mr. Marcuse?

A. I found that out; yes.

Q. You are using the American Weekly?

A. We are using the American Weekly.

Q. And you have used it in January, February and March of 1951; isn't that correct?

A. Yes.

Q. On the Seroil accounting, according to Media Records, the Seroil account used the combination Times-Picayune and States in equal amount, or approximately equal amounts, in 1946, in 1947 and in 1948. That was before your agency had the management of it?

A. That is right.

Q. That was a predecessor firm of your firm, wasn't it, that managed the Seroil account then?

A. We took over the firm that managed the Seroil account.

Q. Also according to those records the Item was not used to any extent whatsoever in 1948 and in 1947; is that correct?

A. I don't know."

Mr. Rashid proceeded to read the Redirect Examination, as follows:

"Redirect examination.

By Mr. Rashid:

Q. You said that at the present time you believe you were using the Item, is that correct?

[fol. 595] A. Yes. Well, we are using the American Weekly.

Q. That is the Sunday——

A. Yes.

Q. Then, on black and white daily, you are using the Times-Picayune and States only?

A. Yes."

(The deposition of Phillip Marcuse was concluded.)

Mr. Flurry: May it please the Court, at this time we should like to offer in evidence a certain portion of a deposition taken from Mr. Tims, on Wednesday, January 17th, 1951, in the Post Office Building in New Orleans.

The Court: What is the purpose of that? On what theory?

Mr. Flurry: It is testimony with reference to the basis or formulae used by The Times-Picayune Publishing Company for the allocation of their various expense items. I thought it would be much briefer to offer the deposition than to undertake to repeat the testimony here.

Mr. Wilson: Might I confer with Mr. Flurry just a few moments? I believe we have no objection to it.

(Counsel confer.)

The Court: I thought it had to do with matters already testified to. That is why I asked what the purpose was, or what it had reference to.

That is all right.

[fol. 596] Mr. Flurry: It is rather lengthy.

(Mr. Flurry proceeded to read that portion of the deposition of Mr. John F. Tims, Jr., beginning on page 84 thereof, as follows:

[fol. 597] Mr. Flurry: (Reading):

Q. Can you explain, please, Mr. Tims, upon what basis expenses have been allocated? Will you let us have that explanation?

A. On newsprint paper: "Charged on basis of actual rolls of paper placed into use for each edition. Newsprint sales are shown on Company's annual report in the condensed schedule of earnings from all sources and is not allocated. Newsprint sales are deducted in total from newsprint paper charged to the Times-Picayune in the audit report prepared by Haskins & Sells." I'd like to elaborate on that for your information, if I may. In other words, when we print the States this afternoon, the last edition I guess we may print eight or ten thousand papers, maybe more, maybe less, and may be necessary for us to change a roll of paper. We put a fresh roll on that and that is charged to the States, although only ten per cent of that particular roll will be used by the States and will be continued on to the Times-Picayune with its first edition that comes out at seven o'clock tonight and, of course, as we go into the Times-Picayune, then when printing the City edition and have ten or fifteen thousand copies left, it is necessary to change rolls of newsprint. Put on a new roll of newsprint and it is charged to the Times-Picayune.

It is kept on there and when the States' crew comes in, they start the press up and run it that way the following morning. That's the only way that I know to do it satisfactorily without getting into a lot of cost of taking it off and weighing it and putting it on and the likes of that.

Newsprint sales are waste. For instance, we take a lot of [fol. 598] our paper when it gets to the butt and send it up

to the third or the second floor. That is cut up into various sizes and we sell that to printing houses or restaurants that wrap up poor-boys and all that money is credited back to the Times-Picayune newsprint, although some of it may have been charged out to the States.

Ink: "Ink is prorated on basis of newsprint consumption, with the exception that colored ink for comics is classified exclusively Sunday."

We have a color press that entirely prints our comics so that can be taken and put aside pretty well. Ink is prorated on the basis of newsprint consumption. As I understand it, if we used a thousand tons a month and 700 tons used by the Times-Picayune and 300 tons evening edition of the States, then the ink would be charged 70 percent to the morning edition and 30 percent to the evening edition.

Roto Magazine Production: That's the Roto Magazine Section printed in Louisville.

This Week Magazine is printed in Chicago and used by a great many other newspapers.

Q. The Sun-Times prints that?

A. No. Alco-gravure prints it in Chicago.

Q. That's the Daily News?

A. No, sir. This Week Magazine is part of the Chicago Daily News, Detroit News, Baltimore Sun, Washington Times, New York Herald-Tribune, St. Louis Globe Democrat, Milwaukee Journal, Los Angeles Times, Atlanta Journal, Birmingham News, Memphis Commerical Appeal, [fol. 599] Times-Picayune, and that is used solely in our Sunday paper so the expenses of that are charged solely to the Sunday paper and the earnings that we get out of it, credited to the Sunday paper.

That is also true on Dixie Roto Magazine; all printed and paper furnished us under contract by the Standard Printing Corporation, which is a subsidiary of the Louisville Courier-Journal in Louisville.

Composing Room: "Payrolls are generally allocated on the basis of night shift for the Times-Picayune (morning and Sunday) and day shift for the States (evening). Payrolls for apprentices and teletype operators and a few others are prorated 50-50 between the Times-Picayune and the States. All of Superintendent's salary is charged to Times-

Picayune. Supplies are prorated 80-20 between the Times-Picayune and the States."

There again, take this afternoon, we will set all the markets on the States afternoon payroll. We'll use it in just one edition, this last edition. The type is all set and we carry it on and use it in the Times-Picayune and all the positions start at seven o'clock at night. The racing entries that we make, so many of them in the afternoon edition and, of course, that's all set in the afternoon and the morning paper picks it up.

Press Room: "Payrolls are allocated on basis of night crew and special comic crew for the Times-Picayune and day crew for the States. Superintendent's salary is prorated 66-2/3 per cent to Times-Picayune and 33-1/3 per cent to the States. Supplies, rollers and other expenses are prorated 80-20".

[fol. 600] Stereotype Room: Same as Press Room, that is, we have a day crew charged to the States, night crew charged to the Times-Picayune, except that all superintendent's salary is charged to the Times-Picayune. If I may elaborate on that a moment for your information, Mr. Leonard. We have a superintendent of the stereotype department. When we bought the States, we had a superintendent of the Composing Room. When we bought the States over we had that fixed cost already established and in the Press Room we started with a foreman on the morning side and a foreman on the evening side and there was so much turmoil down there, we decided we'd better have the whole thing under one like we did in the other departments; put a superintendent on and we allocated part of that cost to the afternoon paper.

Photo Engraving Room: "Payrolls, supplies and other expenses are prorated 80-20 except that all of Superintendent's salary is charged to Times-Picayune." He was there before we had it.

Mail Room: "Payrolls are distributed on basis of night crew and extra people charged to Times-Picayune and day crew to States. Supplies and other expenses are prorated 80-20."

I might say that the States crew in the day time are all charged to the States. There is a lapse of a good deal of

time between editions and during that time that they are not working on the States, they are stuffing This Week Magazine into our comics and into our locally edited magazine, so the States crew are doing work for the Times-Picayune.

Maintenance: "All charged to the Times-Picayune except [fol. 601] supplies which are pro-rated 80-20."

Advertising: "Payrolls are allocated on different bases, depending upon payrolls classification. Generally, there are separate Display payrolls (meaning retail), but all of Service payroll is charged to the Times-Picayune. Classified payroll charged on basis of separate crews arbitrarily segregated. Payroll General is all charged to the Times-Picayune. Advertising department heads payroll is properly segregated, with one exception."

I might tell you about that. I guess I slipped up on it. A man by the name of Swayze, retail advertising manager of the States went into the Marines and when he went into the Marines, we took a man by the name of Mackie off the retail staff of the Times-Picayune and made him retail advertising manager of the States and took him off the retail payroll of the Times-Picayune and put him on the retail payroll of the States. When Swayze comes back from the Marines and we give him back his job we forget to transfer Mackie back to the retail department of the Times-Picayune. I just wanted to explain that one exception to you, sir.

"Expenses are generally distributed on actual basis except classified, which is prorated 80-20. Commissions are allocated on same basis as revenues on which they are computed." That is commissions to our national advertising representatives, I think six per cent. In other words, whatever the amount of that breakdown Mr. Adams told you about, then that percentage of the commission is charged to the States and that percentage of the commission charged to the Times-Picayune.

[fol. 602] Editorial: "Payrolls are generally segregated on the basis of separate staffs, except for photographers and messengers, which are prorated on basis of ratios arrived at after consideration by the Company. Expenses are generally charged direct, with some exceptions for news services and features, which are sometimes used by all editions but

are charged entirely to either the Times-Picayune or the States."

In other words, the States will use Pegler five days a week and all of that expense is charged to the States, although the Sunday Times-Picayune and New Orleans States uses Pegler; or Pie Dufour who writes a column. Writes it six days in the States and the seventh day it appears in the Times-Picayune New Orleans States. We make no attempt to break it down.

Circulation: "Payrolls are generally charged on basis of separate crews except that Circulation Manager, Educational payroll, Promotional payroll, Country Circulation department, including country canvassers, and assistant district managers are charged exclusively to the Times-Picayune, although they perform work for the States also. Expenses are allocated on an actual basis; except transportation and travel and postage."

What is meant there is that if Mr. Coleman, the Circulation Manager, makes a trip out in the country or attends the International Circulation Managers Convention, the entire cost is charged to the Times-Picayune but does not mean that the States and the Times-Picayune are not charged actual transportation and hauling. When I first looked at it, I knew something was wrong. The States charged with [fol. 603] all hauling that we do here in the city and all trucks that the States runs out into the country.

Q. Transportation includes entertainment, does it?

A. I would think so, yes, sir.

Office and General Expenses: "All charged to the Times-Picayune except for a few donations which are charged to the States."

Fixed Charges: "General Insurance, real estate and personal property taxes, franchise tax are charged to the Times-Picayune. Social Security taxes are allocated on the basis of payroll charges. Sales tax and federal excise taxes and group life and hospitalization insurance are allocated 80-20."

Q. In that explanation, Mr. Tims, where you used the figures 80-20, the 20 per cent is for the evening States, is it not?

A. Yes, sir.

Q. And the eighty goes to the Times-Picayune morning and Sunday?

A. Yes, sir, that's right.

Q. Morning and Sunday are treated as an entity?

A. As morning and Sunday edition, yes, sir.

Q. And the States is treated as if it were a separate afternoon paper?

A. As an evening edition of the Times-Picayune Publishing Company.

Q. Did you mention how the expenses of maintaining your advertising department are treated?

[fol. 604] A. Yes, sir. I mentioned that. "Advertising payrolls are allocated on different bases depending upon payroll classification. Generally, there are separate Display payrolls, but all of Service payroll is charged to the Times-Picayune. Classified payroll charged on basis of separate crews arbitrarily segregated. Payroll General is all charged to Times-Picayune. Advertising department heads payroll is properly segregated with one exception."

Q. You mentioned that?

A. Yes, sir. "Expenses are generally distributed on actual basis except classified, which is prorated 80-20. Commissions are allocated on same basis as revenues on which they are computed."

Q. And by "commissions," does that refer to the amounts which you pay your advertising representatives?

A. Our national advertising representatives, Jann and Kelley, Inc.

Mr. Flurry: That ends on p. 94 of the deposition.

COLLOQUY BETWEEN COURT AND COUNSEL

Mr. Wilson: If the Court please, Mr. Flurry has assured me that he merely offered this portion of the deposition to save Mr. Tims the strain of having to go back through all of this again; however, I want to call to the Court's attention the fact that we had rather extensive memoranda, notes, etc., available for Mr. Tims to testify from at the time; and, while I am told there will be no further examination, any cross examination as to this portion of the testimony, there

are some additional questions which the Government desires to ask.

If that examination is going to be of any profit, whatever, [fol. 605] I would suggest that they give me the questions in advance, because Mr. Tims is going to have to review the records to obtain the information. He has a phenomenal memory, but he can't carry all of this in his head.

The Court: Well, the information will be readily available, will it not?

Mr. Wilson: It may take an hour or several hours to dig it out of the records over there.

Now, I am perfectly willing to do it the other way.

The Court: Well, if they have the questions prepared and can give them to you, that is one thing.

Mr. Flurry: We don't hesitate to give them.

The principal part of that examination will be with reference to the method used in the allocation of their revenue. We are not using the record here on it, because it doesn't seem to be complete on allocation of the revenue; however, it does seem to cover every department on the expense side; so, we wished to introduce the deposition in order to save time.

Mr. Wilson: I can state to the Court that it isn't incomplete on revenues, because Mr. Tims doesn't feel qualified to testify on that and Mr. Adams testified on that. It is all in Mr. Adams' testimony.

Now, if you want Mr. Tims to review Mr. Adams' testimony, we will see what we can do for you.

Mr. Flurry: Will you ask Mr. Tims to do what preparation he would like in connection with the testimony with [fol. 606] reference to the handling of revenue.

The Court: All right.

Mr. Flurry: Would Your Honor like to proceed?

The Court: No, I think we can stop now.

Mr. Phelps: I am anxious to find out what the order of witnesses would be, if the Government is prepared to advise us. There are two more advertising witnesses on general advertising. I don't want to bring all these media records over here if we aren't going to use them tomorrow.

Nehlig and O'Donnell: Do you plan to——

Mr. Kramer: O'Donnell will not be here this week, and I am not sure whether the Government is going to call Mr. Nehlig, although he has been subpoenaed. He certainly won't be here tomorrow.

Mr. Phelps: Thank you.

The Court: He will not be here tomorrow?

Mr. Kramer: No.

Mr. Phelps: I think Mr. Tims will take the stand.

Mr. Flurry: I think we may as well complete Mr. Tims.

Mr. Phelps: Do you plan to use Mr. Houghton on any accounting tomorrow?

Mr. Flurry: No accounting.

Mr. Kramer: We hope to get through with Mr. Coleman tomorrow. He has been sitting very patiently throughout the proceeding.

Mr. Phelps: I understood he was to be next week.

Mr. Kramer: That is right; but if we run out of witnesses, [fol. 607] we will substitute some.

Mr. Phelps: Mr. Houghton is following Mr. Tims, then. You told me you were going to have the classified and then the retail.

Mr. Kramer: That is what I told you, but we may run out and His Honor will either have to adjourn or we will call Mr. Houghton.

The Court: Let me understand: Mr. Houghton is the accountant?

Mr. Kramer: His testimony will be offered in two parts: The first part has to do with advertising lineage and accounts: the very thing we have been talking about today, generally.

The Court: When do you expect to call him?

Mr. Kramer: He can go on tomorrow. As for the accounting part, his testimony will be that of the last witness in the Government's case, and we think that will be Wednesday or Thursday. That is a guess. We don't know.

The Court: I see.

Mr. Phelps: Do you have any charts, other than the ones you furnished us on Mr. Houghton?

Mr. Kramer: We furnished them. We don't know of any.

Mr. Phelps: Thank you.

The Court: We will recess until tomorrow morning at ten o'clock.

(Whereupon, at five o'clock, p.m., a recess was taken until Friday, May 4, 1951, at ten o'clock, a.m.)

[fol. 608] PROCEEDINGS OF MAY 4, 1951

(The trial was resumed, pursuant to adjournment, on Friday, May 4, 1951, at 10:00 o'clock, a.m.)

JOHN F. TIMS, JR., resumed the witness stand, having previously been called by the Government, and testified further as follows:

Mr. Flurry: We now offer Government Exhibit No. 18, which has been previously identified, Your Honor, but has not been offered in evidence. It is the rate card effective February 15, 1933.

(The document marked "G-18" for identification was received in evidence.)

Cross examination (Continued).

By Mr Flurry:

Q. Mr. Tims, I would like to ask you just one question with reference to the testimony you were giving at the close of the testimony, when you were last on the stand. I asked you about the raise in the rates of the Times-Picayune morning and Sunday and did not raise the rates in the States in 1950, and you added that you increased the retail display rates in the States in 1951. Did you also increase the retail display rates in the Times-Picayune morning and Sunday at that time?

A. Yes, sir. In 1951?

Q. In 1951.

A. Yes, sir.

Q. Now, I showed you the 1947, 1948, and 1949 audit reports of The Times-Picayune Publishing Company in which you read the net profits before administrative ex-

[fol. 609] penses for The Times-Picayune Publishing Company, morning and Sunday, as one unit and the States, evening, as another unit. Was that report for the purpose of furnishing information to the stockholders and those charged with the responsibility of the conduct of the business in its operations?

A. Well, the statement that I read was net profit before administrative expenses and also before taxes. I don't think you said that just now. It was before taxes, too.

Q. That is right, but the question I am asking you now, Mr. Tims, was this breakdown into two units as shown on those reports for the purpose of furnishing information to the officers and others charged with the responsibility for operations of the business as to what was being done in the morning and Sunday unit and in the evening unit?

A. The purpose of the report was to be furnished to the President that he submits to the Board of Directors. It is not submitted to the stockholders. We have never issued a report to our stockholders. They are free to come and ask for one and look at one if they choose.

Q. In other words, it was to show to the Directors and the principal officers the actual operations as far as the two units were concerned?

A. Yes, sir; the statement spoke for itself.

Q. Was that method of setting up the operations approved by you and Mr. Nicholson?

A. It was not approved by me.

Q. Do you know whether or not it was approved by Mr. [fol. 610] Nicholson?

A. You go back to when we purchased the States in 1933, Mr. Leonard Nicholson, Mr. Alvin Howell, who was then living; he was first Vice President of The Times-Picayune Publishing Company, and Mr. York Nicholson was Second Vice President of the Times-Picayune Company. Both of those gentlemen are deceased, and I think this arbitrary method of allocating expenses and revenues was more or less set at that time. I took no part in it.

Q. Now, who is your certified public accountant? Who makes your audit?

A. Haskins & Sells.

Q. How long have you been using an outside public accountant for that purpose?

A. I don't recall, exactly. The Minutes of our Board would reflect when they were employed; but I would say, maybe five years, maybe six. I don't know, exactly.

Q. Has Haskins & Sells, since they have been employed as your auditors, recommended or suggested any changes in the setup of your allocations of expenses and revenues?

A. My recollection is that they did, twice.

Q. Could you tell us what those recommendations were?

A. I don't remember. There was a letter that they furnished at the time that they furnished the audit. We would know, if we could produce that letter.

Q. Their recommendation was made in the form of a letter?

[fol. 611] A. Yes.

Q. Could you supply us with a copy of that recommendation?

A. I will do my best.

Mr. Wilson: We certainly can. We will be very glad to.

Mr. Flurry: Thank you.

By Mr. Flurry:

Q. Now, Mr. Tims, are you, as general manager, able to determine from your accounts, as allocated, the exact operating results as to revenues and expenses for the Times-Picayune, morning and Sunday, and for the States, evening?

A. I would like to have the question repeated, please.

Mr. Flurry: Would you read the question.

(The Reporter read the last question.)

A. No.

Q. You were aware, as general manager, that some of the expenses were not allocated as between the States and the morning and Sunday Times-Picayune?

A. Yes. I may add this, and I have told you before: that it was looked upon as one operation. I have realized for sometime that maybe something was charged to the Times-

Picayune, morning edition, that maybe should have been in the evening edition or the evening edition should have been in the morning edition; but I have never seen any need of breaking it down into too much detail.

Q. Now, how do you allocate your revenues from circulation? Is that done according to a formula?

[fol. 612] A. Mr. Adams, who is the credit manager and handles all the receivables, can answer that. I don't know that from my own information.

I believe, when our depositions were taken, we suggested that Mr. Adams would be glad to give any information along that line that Mr. Leonard wanted. I think he brought over a great many records, including his control books, to show me at that time. I can't speak from my own knowledge.

Q. You just don't know how the circulation revenues are allocated?

A. That is right.

Q. Now, can you tell us how the advertising revenues are allocated, as between the Times-Picayune, morning and Sunday, and the States?

A. Well, to the best of my recollection, I think Mr. Adams could give it accurately to you; that is, that the classified was broken down.

The Times-Picayune takes 80 percent of the revenue and the States 20 per cent. Just how——

Q. Now——

A. I beg pardon.

Q. Go ahead.

A. Just how the national is broken down, I don't know accurately. The retail is broken down and the lineage that is run in the States is sometimes credited to the Times-Picayune.

Q. In other words, the actual lineage that goes in the [fol. 613] States and the Times-Picayune under retail display is according to the amount received for that lineage? Is that right?

A. Well, if it was added up to 2400 lines, which was a page that D. H. Holmes has in the States this afternoon, it is posted as 2400 lines in what we call a line book. From

that, it is posted into a book that has thirty-one days and 2400 lines and today is the 5th of May. It is shown there and 2400 lines in the morning Times-Picayune. Tomorrow, it shows that date, 2400 lines, and 2400 lines on Sunday. It shows that.

Then, the extensions are made on that bill, so many lines in the evening edition, so many lines in the morning edition, and so many lines in the Sunday edition and put the total dollars. Those line bills go down to the credit department to Mr. Adams, who handles all the bills receivables. Then it is posted in the ledger. From then on, I don't know how it is handled.

Q. That would be an allocation according to the actual lineage carried in each paper, would it not?

A. Of the retail display, yes.

Q. Now, I believe you said that the classified was divided on an 80-20 basis?

A. Yes. That is correct.

Q. Is that also true with reference to the general advertising?

A. I don't know just what the breakdown is.

Q. Do you know of any reason for adopting a different basis in breaking down the unit combination rates in the classified and the unit combination rates in the general?

[fol. 614] A. Do I know any basis of doing it?

Q. Any basis for any difference in doing it in the two instances?

A. Yes. I would say that you could set it up on circulation, on the percentage basis. If you take, for instance——

Q. Well, that is the basis you would use in the classified, is it not?

A. No. It is an arbitrary basis of 80-20. The Times-Picayune doesn't contribute 80 per cent of the circulation and the States, 20. The ratio is much closer. The States contributes more than 20 per cent to the total.

Q. Now, your Roto Magazine advertising income: Is that all credited to the Sunday newspaper; that is, to the Times-Picayune Sunday morning unit?

A. Mr. Adams can give you that information, Mr. Flurry. I just don't know. I would assume it is credited to the Times-Picayune, Sunday. I think his records will reveal

that he breaks it down three ways: morning, evening and Sunday.

Q. Mr. Tims, as general business manager and a member of the Board of Directors, have you explained to the Board of Directors and to Mr. Nicholson that the showing of the net profit from the States did not include a complete allocation of expenses?

A. No, sir. I think Mr. Nicholson knows that, because he was originally there when we purchased the States.

Q. He was as aware of that as you were?

[fol. 615] A. He was aware of the arbitrary system that was set up.

Mr. Flurry: That is all of the questions, Your Honor, that we have for Mr. Tims.

(Document handed to the Court.)

Mr. Flurry: We wish to offer in evidence Government Exhibit 103, which is a photostatic copy of the War Production Board verbatim transcript meeting, Appeal Board, Times-Picayune Publishing Company, dated November 20, 1944; time, 4:30 p. m.; place, Room 5066, Social Security Building, reported by Division of Administrative Services Operating Facilities Branch, Minutes and Reports Section, pp. 1 to 18, and certified by Mr. Wayne C. Grover, Archivist of the United States, under seal.

Mr. Wilson: If the Court please, this document happens to be a transcript of a hearing made some ten years ago.

We have had a number of pretrial conferences in this case. The Government assured us that they would give us a list of every document that they proposed to introduce in this case.

They have never mentioned this document, and it isn't because they didn't know it. Mr. Flurry told me when he produced these copies yesterday that the reason that we didn't receive a copy was because he told some of these people to give us a copy and they didn't give us a copy; so, he knew this document was going to be produced. He has had it here. He has known about it. He has had every opportunity to inform us about it; yet, he comes into court and produces this document.

Now, he showed it to me for the first time yesterday [fol. 616] morning and he wants to offer the thing in evidence, when he has known for all this time that he is going to use it.

Now, I am not worried about that; but we are getting into a side issue and an irrelevant issue that has nothing, whatsoever, to do with this case.

If he wants to try this War Production Board case over again, I will try it, and I will try it in this court.

The Court: Is this an objection?

Mr. Wilson: This is an objection, and I object to going into side issues on matters that happened ten years ago.

I realize that it is a matter within the discretion of the Court as to whether we are going into it; but, if it is going to be admitted, I want a full opportunity to explain to this Court exactly what the issue was before the War Production Board, what the problems were, and I want to go into the whole thing.

Now, if Mr. Flurry wants to introduce it, here it is. I still object to it, because we are going into side issues and absolutely irrelevant issues.

This witness has testified. I have no doubt about his integrity. If Mr. Flurry does, let him attack it.

Mr. Flurry: May it please the Court, I would like to correct Mr. Wilson on the point that we are not attacking the integrity of the witness at all.

We are using this document, merely for the purpose of showing an admission by the Defendant sometime before [fol. 617] this law suit was filed, with reference to an issue which is material in this case; namely, whether or not there were two separate newspapers or one newspaper with separate editions.

Now, as to our conduct in producing this document——

Mr. Wilson: Forget about it. I am not interested in that.

Mr. Flurry: I want to explain, Your Honor, for the record that we had no intention of using this document, which is shown by the fact that we had no certified copy. If we had expected to introduce it in evidence, we would have gotten a certified copy.

Mr. Wilson: If the Court please, I withdraw my remarks I was a little bit annoyed.

I withdraw my remarks, and I have nothing more to say on that ground. I make my objection purely on the grounds that it is an irrelevant issue.

The Court: The objection is overruled. We will let it be admitted.

(The document referred to was marked G-103 for identification and was received in evidence.)

Mr. Flurry: We wish to read only from the bottom of p. 8 to the top of p. 9: "Mr. Tims" * * *

Mr. Wilson: I object to that. Now, I want the whole document read. There is not going to be part of this thing. We are going to have it all. Start at the first and read to the end.

Mr. Flurry: I have no objection, Your Honor, to reading [fol. 618] the whole thing. I thought I would read only that which seems to be pertinent.

Mr. Wilson: I don't know what is pertinent. I want it all read.

The Court: Read it all.

Mr. Flurry: May I ask Mr. Kramer to read it?

The Court: Surely.

(Mr. Kramer read Government Exhibit 103.)

[fol. 619] Mr. Flurry: That concludes the cross examination of Mr. Tims, Your Honor.

Direct examination.

By Mr. Wilson:

Q. Mr. Tims, Mr. Flurry asked you the other day if it was the policy of The Times-Picayune Publishing Company to charge what the traffic would bear where the traffic would bear it. I would like to know why you are in business over at 601 North Street, in the City of New Orleans?

A. Well, we are in business to make a profit, that we can make a fair return to over six hundred stockholders and keep close to a thousand people employed and pay them each week.

Q. Have you ever heard that it was illegal to make a profit out of your business?

A. No, not to my knowledge.

Q. Well now, there was another question that came up about whether you had ever said—or, I believe they said "in writing;" I don't know whether this is "in writing" or not—that you had editions of your paper prior to the time this law suit was filed. I want to read to you this statement that you made to the War Production Board:

"Mr. Lillybridge: Is your paper a seven-day paper or a six-day paper?

Mr. Tims: We have thirteen issues a week. The Times-Picayune Publishing Company is the owner of The Times-Picayune, published morning, The Times-Picayune-New Orleans States, published Sunday, and [fol. 620] The New Orleans States, printed week-day, afternoon. As I said before, we are not permitted to take any of our morning tonnage or any Sunday tonnage and allocate it to our six-day afternoon field."

What were you thinking about then? Were you thinking about editions?

A. I don't remember; it goes back too far. I don't remember. I was up in Washington to get some newsprint.

Q. And that was your job for the newspaper, wasn't it?

A. For the Publishing Company.

Q. And you told them you had thirteen editions a week, didn't you?

A. I don't recall just what I told them.

Q. There is your statement: thirteen editions a week.

Now, I want to look at these sheets from Standard Rate & Data that have been introduced as Government's Exhibits 19 and 20:

Mr. Tims, (handing documents to witness) you will note in the lefthand column there,——

A. You are talking about "G-19" now.

Q. "G-19."

A. Yes.

Q. ——the information with respect to The Item, Ltd. What does it show as to the Item papers?

A. It shows an ABC insignia at the top, and the "Item" on one line; the "Tribune" and the "Sunday Item-

Tribune," published Item week-day, evening; Tribune [fol. 621] week-day mornings; Item-Tribune, Sundays only."

Q. Well now, over in the second column, the information appears as to The Times-Picayune Publishing Company. What does it show over there?

A. "Times-Picayune-States" published morning, evening and Sunday.

Q. And the same is true on the Exhibit 20, is it not?

A. That is correct.

Q. And those are sheets from Standard Rate & Data for 1935? Am I right?

A. There is one from August, 1935, and the other is from September, 1935.

Q. And that information is information compiled from information that you, as the Business Manager of The Times-Picayune Publishing Company, submitted to Standard Rate & Data, is it not?

A. I don't know if I submitted it. The Publishing Company submitted it. Maybe Mr. Ladreyt sent it up; but the Publishing Company did.

Q. Well now, going back to 1940 or '41, there was a period there just before Mr. Nicholson—and I am speaking of Mr. Ralph Nicholson—took over the Item, and there was quite a bit of questioning in regard to Mr. Wheatley being down here; Mr. Ralph Nicholson being over at the Roosevelt shortly after a meeting of some of the publishers, and Mr. Flurry made reference to a meeting at the Roosevelt:

Mr. Tims, was that a meeting or was that an invitation to drop in for a drink?

[fol. 622] A. As I recall it, I think Mr. Nicholson received the invitation from Mr. Wheatley to drop over to his room. If it was to have a drink, it may have been; I just don't remember. It was no meeting. There was no planned meeting. It was purely informal. They asked us to drop over around five o'clock. That is usually the time Mr. Nicholson leaves the office.

Q. And when you went down to Arnaud's and you paid the check that was not a meeting down at Arnaud's? That was dinner?

A. Mr. Rothenburg was there. Mr. Wally Bauerlein, who is now dead: he was there too. He came down several years ago from Kansas City and established the Bauerlein Agency. As I was coming in the hotel he said, "I understand Rothenburg is in town." I told him, "Yes." He said "I would like to see him." I said, "I guess we will all go down to dinner; drop around later to his room."

That is how Wally Bauerlein happened to be there at this dinner.

Q. While we are on that subject, there has been some discussion about meetings you had with Mr. Leonard Nicholson. I wish you would explain to the Court just what your relations are over there on this paper, and how you work over there. Do you have meetings with Mr. Nicholson other than when you call a board meeting or stockholders meeting?

A. Well, I have been on the paper forty years, and I started on the Picayune. The Picayune was owned by Mr. Leonard Nicholson, and his brother, Mr. Yorke Nicholson. The papers merged, consolidated, in 1941 and I went over [fol. 623] on the consolidation. At the time Mr. Nicholson, Mr. Leonard Nicholson, was made President of the company; I think I was Advertising Manager. Over in the building there we have now six floors. When we moved into it there were five and a basement. We were sort of a big family there. We see each other all the time. There are no planned meetings that are called. I may be in Mr. Nicholson's office; George Healy may drop in. We will all sit down and chat informally. Maybe Mr. Nicholson may have received a phone call from someone who is quite irritated because they had asked that his paper be stopped and sent to California, or something like that. He might phone Mr. Coleman to come up to his office and take the letter.

Mr. Kramer: I didn't get the name of the man whom he might phone.

Mr. Wilson: Mr. Coleman.

[fol. 624] Q. Well, now, that raises another question. You said you had been in the newspaper business forty years. Mr. Tims; how long have you been familiar with the use of the unit rate in the newspaper business?

A. Since I have been in it, starting way back there.

Q. Well, let's come up to the time in 1935, I believe it was, that you put in the classified unit rate. What knowledge did you have at that time about the use of the unit rate?

A. Well, I would say that maybe one hundred twenty-five or more publishing companies were using the unit rate.

Q. And we come on up to 1949, all of 1949, and I am talking now about the use of the unit rate on general advertising. What knowledge did you have about that at that time?

A. Possibly between one hundred fifty or two hundred were using it.

Q. Well, what was the position of the Times-Picayune as the publisher of a morning edition and an evening edition, with respect to the other people who were publishing morning and evening editions?

A. No difference that I can see.

Q. Well, I know, but what was—I mean your rate—how did your rate structure in 1949, in the Fall of '49, compare with other peoples'?

A. I can't recall.

Q. Well, we will put it another way. You told me that between one hundred and fifty and two hundred were using the unit rate. You were not using the unit rate then, were you?

[fol. 625] A. In 1949?

Q. That is right.

A. Not completely.

Q. That is, you had an optional?

A. Yes.

Q. And you put in the unit rate right down the line on general advertising starting February 1, 1950?

A. That is correct.

Q. And prior to the time that you did that though, were you in line with the majority of the publishers publishing a morning and evening paper, or were you the exception in having an optional rate?

A. We were the exception.

Q. Now you were asked by Mr. Flurry what factors you considered in deciding on an increase in rates. Mr. Tims, I wish you would tell the Court what factors you con-

sidered, and when I say "you", I mean you and your superiors in the Times-Picayune Publishing Company, when you decided whether or not to increase rates?

A. Well, there are a great many factors that must be considered. You have the cost of newsprint, you have the cost of labor, you also have the problem of the ever increasing amount of media that confronts the advertiser to participate in that dollar, and each year there appears to be more media. You take network radio, that takes an awful chunk; spot radio, very few people know anything about, but it amounts to more money than network radio. Magazines. I saw some figures that someone showed me where the leading twenty or twenty-five magazines last year carried, in this market alone, over two million dollars, broken down. Then you have outdoor, which is posters and electric boards—you can ride around New Orleans and see the vast number of them.

[fol. 626]

The Court: When you think of magazines, you mean local manufacturers who advertise nationally?

The Witness: No, Judge. I mean, for instance, if you took these twenty-five magazines, say, Calumet Baking Powder Company, Good Luck Margarine, any number of accounts, the total amount of revenue of the magazines, broken down to circulation received in this market—that amount of money was charged to this market. Then you have streetcar costs and now you have the impact of television.

I am sure most people who are here read the Times-Picayune this morning. The front page story impressed more than anything else, that Procter & Gamble are now going to give Red Skelton a million dollars a year. Well, that million dollars will come from some place. That is not going to pay anything as far as time or space or television or building the show. He is going to get the million dollars himself. We are going to feel that effect in some media of advertising, maybe newspapers, maybe outdoor, maybe magazines. Who knows?

In addition to that, you have a lot of these small papers, like the Algiers Herald, the Jefferson Parish Times, they carry a good deal of Gentilly news. They are developing to carry more and more advertising. Then recently we

find the item going out and selling an advertiser for a certain number of pages, full coverage. By that, I mean just a week ago last Wednesday they carried a twelve page [fol. 627] section for Maison Blanche. I can't recall from memory just what the Item's city circulation is, but they agreed to take that section separately and deliver it to every home that did not receive the regular Item. So it is a vast number of factors that you take into consideration, keeping in mind that you are not going to do anything to price yourself out of business.

By Mr. Wilson:

Q. Now you say "price yourself out of business", what are you talking about? Are you talking about in comparison with Birmingham or some place like that or are you talking about here?

A. Well, you talk about it in two ways. You talk about it here and you talk about it in Birmingham. A national advertiser on a number of campaigns, they will have so much money and they will want to buy as many impressions as possible. They will take Standard Rate and Data Service, and they will look at milline rate, impact. We have a milline rate of three dollars, the Louisville Courier Journal and Times $1.87, Kansas City Star, $1.25, New York News, $1.20, Chicago Tribune, $1.19. Those papers that can compete on a milline rate have a much better chance to secure the business.

Q. In other words, special campaigns run in special markets are picked largely upon the basis of where they can get the best for their advertising dollar, is that it?

A. That is true. Mr. Ladreyt told me some time ago, on the Elgin Watch account, we carried it last year—I believe we carried it—that they were not going to use New Orleans this year because they were going to use television. They may consider some markets where television is not on, [fol. 628] like Shreveport.

Q. Now, with the unit rate you have an open milline rate of $2.14, do you not?

A. I haven't figured it lately, but the Standard Rate will show that. I think it is approximately $2.14 and goes down maybe to $1.85. I don't know just exactly.

Q. Now the question came up, Mr. Tims, about fixing the unit rate, how you determined the unit rate on classified advertising, and I hand you Government Exhibits 19 and 20, which are sheets from Standard Rate and Data for August and September of 1935. The question was asked you how did you decide to lower the milline rate from 15 and 22, which makes a total of 37¢, to 30¢?

The Court: Milline rate?

Mr. Wilson: No, no, the classified rate. I am sorry. The classified rate.

By Mr. Wilson:

Q. Now I want you to look at Government Exhibit 19, and if you will, look under the heading "Classified Advertising for August, 1935." That is Government Exhibit 19. Please tell me what is said about combination rates on classified advertising there.

A. "Under classified rates, morning, 22¢ per line—22¢ a line per insertion, evenings, 15¢ per line per insertion; Sunday, 30¢ a line per insertion. Count five average words to a line, minimum space two lines. Combination rates listed under general advertising also apply to classified advertising."

[fol. 629] Q. Now, look up in general advertising of the combination rates and tell me what combination rate was on general advertising in August, which also applied to classified advertising.

A. "Morning and evening, 30¢."

Q. Now look at the next exhibit, Government Exhibit 20, for September, and tell me there what your rate is on classified advertising.

A. You mean under September, 1935?

Q. September, 1935, classified advertising.

A. "Classified rates, 30¢ a line per insertion, morning and evening. Count five average words to a line, minimum space, two lines."

Q. Now, if I understand what you have read to me there, the combination rates in September was exactly the same as the combination in August, was it not?

A. That is correct.

Q. And all you did was eliminate the September rates for morning and evening, the 15 and 22?

A. That is correct.

Q. So you made no decision about either increasing or decreasing the rates; you merely kept in effect the rate that was there?

A. Yes.

Q. And that was 30¢ before and 30¢ afterward?

A. Yes, sir.

Q. Now, Mr. Tims, to make this clear, in August, 1935, before you put in combination rate on classified advertising, you had a provision in here, did you not, "Combination rates listed under general advertising also applied to [fol. 630] classified ads," and that rate was 30¢?

A. That is right.

Q. And when you changed it in September, all you did was do away with 15 and 22 as September rates and set in the unit rate of 30¢, which is exactly what your unit rates had been before?

A. Which the Item and Tribune were also doing, selling the morning and evening.

Q. Now, that raises an interesting point. Look at the columns on the left hand in those exhibits. What was the Item Tribune rate on classified advertising?

A. In August of 1935?

Q. Yes, make it August, 1935.

A. "Weekday, morning and evening combination, or Sunday, 20¢ a line per insertion. Five average words a line." That is August, 1935. In September, 1935, "Classified rates, weekday, morning and evening combination, or Sunday, 20¢ a line per insertion. Five average words per line."

Q. Well, now, refer back to August, 1935. Could you buy the Tribune or the Item separately on classified advertising?

A. No.

Q. You had to buy them as a unit?

A. Yes.

Q. And that was prior to the time that you put in the unit rate on the Times-Picayune-States. Am I right?

A. That is correct.

[fol. 631] Q. Now, let's take a look at the Item-Tribune's general advertising rates. I believe at that time they offered the Tribune and the Item separately, and they also offered a combination rate. Would you give me, for August, 1935, the rate, general advertising rate, the open rate for the Tribune in the morning?

A. In August, 1935, "13¢ a line for morning."

Q. And what was the open rate for the Item at that time?

A. "17¢ a line."

Q. That is a total of——

A. Thirty cents.

Q. Thirty cents. Now did they offer a combination rate?

A. They did. "Morning and evening, 22¢."

Q. And I believe those rates are the same for the next month, are they not?

A. Yes, sir, that is correct.

Q. Now, Mr. Tims, you told me a moment ago that you had been in the newspaper business here for forty years. Roughly, how long prior to 1935 had the Item been selling classified advertising on the combination rate only?

A. When they started the morning Tribune in December, 1924, they adopted the unit rate on classified, morning and evening, and continued it until they suspended the morning Tribune, I believe in January of 1941.

The Court: You mean the forced combination?

The Witness: Yes, sir. When the morning paper stop-

[fol. 632] ped, of course it stopped.

Q. Mr. Tims, for Mr. Flurry's benefit, you undertook to start in the top floor of the Times-Picayune building and explain exactly who these people were and where they worked.

A. Well, I took the sixth floor, the farthest end of the building, and came around on each floor.

Q. Well, I take it that these people that you listed—you are talking about Mr. Burke as Promotion Manager, I assume he has people working for him, does he not?

A. Yes.

Q. And you said Mr. Burke works on the morning, evening and Sunday edition. Now how about the people that work for him, what do they do?

A. They work on the morning, evening and Sunday editions.

Q. Now we've got Mr. Gough and you said he was your assistant?

A. That is correct.

Q. Well, what does he work on?

A. He works too hard, I know that much. He works on everything.

Q. And he has two or three people working there with him right now and he has a number more since he has taken over his new title, is that right?

A. Well, he hasn't taken over a new title. He should have the title of Business Manager, but we have been so busy we [fol. 633] haven't done anything about it. When I was Business Manager, he was Assistant Business Manager and Production Manager. Titles don't mean much. You can call me the office boy, it don't make a bit of difference to me. It is performance we are looking for.

Q. How about the people working for Mr. Gough? Do they work on one edition or the other, or do they work on the whole business of the Times-Picayune Publishing Company.

A. We work on all editions of the Times-Picayune Publishing Company.

Q. And then we have Mr. Lynns.

A. Right.

Q. You left yourself out, Mr. Tims, in the testimony, and I am afraid to ask you what you do. I haven't got time enough to do that, but how about the people who work for you?

A. I don't know who works for me. I am there to try to watch everything.

Q. But you do have a certain number of people——

A. The best way to show that, we have got some charts. You asked me if they work for me——

The Court: The witness said they employed a thousand people, is that right?

The Witness: Approximately a thousand. The great majority of them work on all of our editions, and I have had some charts prepared which will show every floor and the people on those floors, and the department, and how they work.

[fol. 634] By Mr. Wilson:

Q. Will they also show the utility that you make of your floor space in your building there?

A. They will.

Q. May I have those charts, please?

A. I've got them over there.

The Court: What is the purpose of this line of questioning?

Mr. Wilson: This is to show that we are not operating three newspapers over there; we are operating the Times-Picayune Publishing Company. I think this chart will very well demonstrate that we use all of our employees for the purpose of running a round-the-clock newspaper, seven days a week.

The Court: Suppose we take a recess and you can examine them.

Mr. Kramer: Just before we rise, I would like to inquire from Mr. Wilson the length of time it will take him to finish with this witness. We want to reschedule our witnesses.

Mr. Wilson: It will be very short. We will probably finish before lunch.

(Short recess.)

[fol. 635] By Mr. Wilson:

Q. Mr. Tims, I show you a chart——

Mr. Phelps: Which is that?

Mr. Wilson: This is D-5.

(Document handed to the Court.)

Mr. Phelps: If the Court please, this is our file copy. The lettering is incomplete on one or two exhibits; but, otherwise, it is a duplicate.

Mr. Flurry: May it please the Court, we would like to object to the charts. We object, first, on the ground that we understood in the pretrial conference that such matters were to be furnished to the Government in advance; whereas, since they are produced at this time, we have not

had an opportunity to go over the chart and verify any figures or facts.

Mr. Wilson: If the Court please, may I remind Mr. Flurry that I agreed to produce all documents. I did not regard that as a document. That is a chart that was prepared. They will be given an adequate time to study it.

I have not offered it yet. I have merely asked the witness to identify it.

Mr. Phelps: We might add that the witness testified three days ago that he had such charts available and offered them to Government counsel, who did not accept them.

We might further add that we received yesterday afternoon, I believe it was, a similar study by Mr. Houghton [fol. 636] from the Government. He is going to testify today.

We don't believe it will work any hardship on the Government for these exhibits to be introduced and we believe that it will clarify the specific issues raised on the cross examination of Mr. Tims in a very material way, which couldn't otherwise be clarified as well.

The Court: Well now, the question arises in my mind as to whether this is the proper place or the proper time.

Mr. Phelps: That might be the case, if the Government had specifically raised this issue as to the single newspaper.

Mr. Wilson: I call the Court's attention to pp. 234 and 236 of the record, in which Mr. Flurry went all through this and asked Mr. Tims to start at the top floor and go down, and he went through it for him. He went right down, floor by floor.

I think it would simplify the whole case, if we had these things identified and had them available so that Mr. Houghton can testify from them, or anybody can.

They can check them and we will have the information here before the Court as to what the utility is of that building, of these employees.

Mr. Kramer: I have two observations, Your Honor.

It occurs to me that, technically, whether or not this is the proper direct examination of Mr. Tims, it doesn't seem to me to be the more orderly way of presenting the defense; but that, it seems to me, lies solely within the discretion of the Court.

The point that we are raising and that disturbs us is that [fol. 637] we have had no opportunity to check the figures. We would like to do that over the weekend. We would like to make certain that the information used in those charts is the same as that you furnished us on a previous occasion and if not, why not.

I am quite sure that, after we have done this checking, there will be no reasonable grounds for objecting; but, now, we can't follow this examination very intelligently.

The Court: I am wondering how this witness can identify these charts, in the first place. He did not prepare them; and, unless he goes into the figures, which is what the Government objects to at this time, I don't see how he has any basis for identifying them.

Mr. Wilson: I have not had any opportunity of finding out whether he can identify them or not. I think he can.

The Court: I am sure he didn't make them.

Mr. Wilson: He didn't do the painting, of course, but these were made under his direction at my request.

The Court: Well, I think before they are admitted, the Government should have an opportunity to check them. I think that the request is entirely reasonable.

Mr. Wilson: I haven't offered them yet, Your Honor; and, I think if I can get them identified and the Government can understand what has been done, they will be in a position to check them.

The Court: There is no attempt to offer them now?

Mr. Wilson: I haven't offered them.

The Court: Is he going to testify from them?

[fol. 638] Mr. Wilson: No. He is going to identify them.

The Court: Let's see how you are going to go about having them identified.

Don't have him testify from them.

By Mr. Wilson:

Q. Mr. Tims, I have handed you Defendant's Exhibit 5 for identification and I will ask you whether or not that depicts a study which was made by you or under your direction at my request in an effort to take the employees of The Times-Picayune Publishing Company and show what their

work was, which editions they worked on, and how many employees you had in each category.

A. Yes.

(The document referred to was marked Defendant's Exhibit 5 for identification.)

Mr. Kramer: If the Court, please, if that is the only question he asks about that chart, I think his procedure is intelligent and will be helpful; but, if he goes on from here, we will have to object.

Mr. Wilson: You wait until I go on.

By Mr. Wilson:

Q. Now, you didn't make this, yourself, did you?

A. No. I did not, not the manual work of it.

Q. But it was done under your direction by people in your office, was it not?

A. In the Promotion Department, under my direction.

Q. And that is to depict employees presently engaged on [fol. 639] The Times-Picayune Publishing Company or for The Times-Picayune Publishing Company?

A. That is correct.

Q. And the keys that are set up on the lefthand side are the keys to your chart? Is that correct?

A. That is correct.

Q. All right. Now, Mr. Tims, I hand you Defendant's Exhibit 6 for identification and ask you whether or not that is a chart prepared under your direction by the same people that prepared Defendant's Exhibit 5.

(Document handed to the witness.)

A. It is.

Q. I ask you whether this chart is designed to show the way in which the equipment, in value, dollar value, is utilized by The Times-Picayune Publishing Company.

A. It is.

Mr. Flurry: Are you going straight down? Second floor, etc.?

Mr. Wilson: Straight up.

By Mr. Wilson:

Q. Mr. Tims, in this same connection, did you make a study of did you have made under your direction a study of the utilization of the floor space in the building used by The Times-Picayune Publishing Company to publish the Times-Picayune, morning, the States, evening, and the Times-Picayune-States, Sunday?

[fol. 640] A. I did.

(The document referred to was marked Defendant's 6 for identification.)

By Mr. Wilson:

Q. I hand you Defendant's Exhibit 7 for identification and I will ask you just to tell the Court briefly what it is or what it shows; not what it shows, but what it is.

A. It is a basement floor of The Times-Picayune Publishing Company. It is a floor plan.

Q. And the key used there at the bottom: Does that correctly indicate the utilization of that space?

A. That is correct.

Q. Thank you.

(The document referred to was marked Defendant's Exhibit 7 for identification.)

By Mr. Wilson:

Q. I hand you Defendant's Exhibit 8 and ask you to tell the Court what that is.

(Document handed to the witness.)

A. That is the first floor of The Times-Picayune Publishing Company.

Should I go any further?

Q. Well, that is enough.

Q. Does the key at the bottom of the chart there correctly depict what is shown on that chart?

[fol. 641] A. Yes. It does.

(The document referred to was marked Defendant's Exhibit 8 for identification.)

By Mr. Wilson:

Q. I hand you Defendant's Exhibit 9 for identification and ask you to please tell the Court what that is.

(Document handed to the witness.)

A. That is the second floor of The Times-Picayune Publishing Company.

Q. Does the key at the bottom correctly depict what is shown on that chart?

A. It does.

(The document referred to was marked Defendant's Exhibit 9 for identification.)

By Mr. Wilson:

Q. I hand you Defendant's Exhibit 10 for identification and ask you to tell the Court what that is.

(Document handed to the witness.)

A. That is the third floor of The Times-Picayune Publishing Company.

Q. Does the key there at the bottom correctly depict what is shown on that chart?

A. Yes.

(The document referred to was marked Defendant's Exhibit 10 for identification.)

[fol. 642] By Mr. Wilson:

Q. I hand you Defendant's Exhibit 11 for identification and I ask you to tell the Court what that is.

(Document handed to the witness.)

A. That is the fourth floor of The Times-Picayune Publishing Company building.

Q. And does the key there at the bottom correctly depict what is shown on that chart?

A. It does.

(The document referred to was marked Defendant's Exhibit 11 for identification.)

By Mr. Wilson:

Q. I hand you Defendant's Exhibit 12 for identification and I ask you to tell the Court what that is.

(Document handed to the witness.)

A. That is the fifth floor of The Times-Picayune Publishing Company building.

Q. Does the key there at the bottom correctly depict what is shown on that chart?

A. It does.

(The document referred to was marked Defendant's Exhibit 12 for identification.)

By Mr. Wilson:

Q. I hand you Defendant's Exhibit 13 for identification and I ask you to tell the Court what that is.

[fol. 643] A. That is the sixth floor of The Times-Picayune Publishing Company building.

Q. And does the key there at the bottom correctly depict what is shown on that chart?

A. It does.

(The document referred to was marked Defendant's Exhibit 13 for identification.)

By Mr. Wilson:

Q. Mr. Tims, you have identified Defendant's Exhibits 7 through 13 for identification as being the basement and the six floors of The Times-Picayune Publishing Company charts showing utilization of space there.

Now, are those all of the floors in that building?

A. That is right: six floors and basement.

Q. And is that all of the space that is used by The Times-Picayune Publishing Company in publishing the Times-Picayune, morning, the States, evening, and the Times-Picayune, Sunday?

A. Now, wait a minute. Will you include in that question our space where we store our trucks for deliveries. That is in a different building. It is not shown there.

Q. You have a separate building where you store your——

A. Keep our trucks.

Q. ——trucks. Where is that building?

A. I forget the street, now. It is off Broad. I have only been out there once. I haven't had time to go there.

[fol. 644] Q. And what use is made of those trucks that are stored there?

A. Maybe I answered that question wrong. I will try to be as factual as I can right now.

Q. Let's answer this question right now.

A. Let me say: I want to give you everything that I can. It is a subsidiary of The Times-Picayune Publishing Company. It is a delivery service. Those trucks are used to haul the Times-Picayune, morning, the States, evening, and the Times-Picayune New Orleans States, Sunday.

Q. Do you have separate trucks for each edition? Or do you use the same trucks for all of them?

A. No. We use the same trucks. They are all used, around-the clock.

The Court: Is this on Poydras Street, sir?

The Witness: I don't know if that is shown there.

Mr. Kramer: I didn't understand Your Honor's question.

The Court: I say, does this include the building on Poydras Street where the deliveries are made?

The Witness: I don't think it does.

By Mr. Wilson:

Q. Is that the building back—I am not too familiar with your Streets.

A. It is on Poydras Street.

Q. It undoubtedly clears it up for the Judge, but not for me.

[fol. 645] The Times-Picayune faces on North Street? Am I right?

A. The main entrance, yes.

Q. Is the back of the building on Poydras Street?

A. Yes, Part of it is.

Q. And that is the open space back there where the trucks drive in?

A. And deliveries are made.

Q. I understand. And that part is only on the ground

floor, is it not? I mean, there is just a ground floor there with a wide, open space where trucks come in and pick up?

A. They come up to a platform.

Q. That is right. And I take it you deliver your newsprint there, papers are taken out from there, and everything else?

A. That is the delivery space. Ink is brought in there, too.

Q. And do you utilize that space for the morning edition, the evening edition and the Sunday edition?

A. All three.

Mr. Wilson: Do you have 6, 7 and 8 of the Government's Haskins & Sells reports? Those blue folders?

Mr. Flury: No. The only copy we have is in the exhibits.

By Mr. Wilson:

Q. I hand you Government's Exhibits 6, 7 and 8, which are reports made on the financial condition of The Times-Picayune Publishing Company for the years 1948, '49 and '50. They show on the fact they are made by Haskins & [fol. 646] Sells.

(Documents handed to the witness.)

A. Let me ask you: What three years did you say?

Q. Wasn't that '48, '49 and '50?

A. No. It is '47, '48 and '49.

Q. I am sorry, '47, '48 and '49, Mr. Tims.

Haskins & Sells have audited the books of the Times-Picayune for at least four or five years, have they not?

A. To my knowledge, it has been about that time.

Q. And isn't it a fact that in making that audit, Haskins & Sells are employed to take the audits made by your own account department, audit those and certify as to the correctness of the figures thereon?

A. That is my understanding.

[fol. 647] By Mr. Wilson:

Q. And they are not asked to make an independent audit of the books of the company in the sense of going in and setting up their own accounting system?

A. No. They make recommendations.

Q. And I believe you said that you had received a letter a time or so making recommendations as to changes in your own method of accounting?

A. They have made recommendations, for instance, that we should pay all our employees by check instead of by cash. We have always felt it would be—or it might develop a bad employer-employee relationship; and it was recommended that we might have a little card and stated on that card would be, "Suggestion of Management: Employees to be paid by check instead of by cash. Will you please indicate your preference: By Cash ☐ By Check ☐ No Preference ☐." Eighty-one per cent preferred cash, so I guess it is going to remain cash; as far as I am concerned it will remain cash if the majority of them want cash. It would facilitate us to pay by check.

Q. They have also made recommendations to you of changes in your allocating of revenues and expenses?

A. Yes.

Q. You said you had a letter and I understand you are going to produce it here for Government counsel.

A. I will do my best to find it. I am sure if I can't Haskins & Sells has a copy in their files. I don't look at all [fol. 648] of these things. I look at one of those things and throw it back.

Q. Well, take Government's Exhibit 6, which is the 1947 Financial Report, and I understand they are all in the same form, are they not, generally? I mean, they are made up in the same way: in the same general form?

A. I would think so; yes.

Q. Now, you told Mr. Flurry, on cross examination, that you were interested in the last line on those reports, and there was some reference made to the fact that there are sheets back there which show separate allocations to the States and to the Times-Picayune, and so forth. This first sheet, though, as I understand it, is a balance sheet for The Times-Picayune Publishing Company, all of its operations, is it not?

A. That is correct.

Q. And when you said you were interested in the last line, what last line were you interested in?

A. Net Profit.

Q. Shown on the first sheet?

A. Shown on the consolidated sheet of The Times-Picayune Publishing Company.

Q. In other words, your interest was in whether or not the Publishing Company that you work for was making a profit?

A. That is right.

Q. Mr. Tims, I hand you Government's Exhibit 29, which is a rate card for December 15, 1948, in effect July 1, 1949, and when you were discussing those rates—and I am talking about the general rates; rates on general advertising—you were asked the question, "What would an advertiser [fol. 649] have to do to get a lower rate than the ten thousand line rate, and I believe you said that he would have to take twenty thousand lines in the Times-Picayune and States. Well now, actually, he would not get a lower rate, it might be a lower milline rate, but the rate itself would be higher, would it not?

A. That is correct; under this rate.

Q. Read off what is the ten thousand line rate for the Times-Picayune only?

A. 38 cents.

Q. And what is the twenty thousand line—is that the next bracket—rate for the Times-Picayune-New Orleans States?

A. 52½ cents.

Q. And that means that he gets his advertising in both the morning Times-Picayune and the evening States?

A. That is correct.

Q. All right. Thank you.

Mr. Tims, I hand you The Times-Picayune Publishing Company Post Office Statement, which I take it you publish in your newspaper; you are compelled to do it, are you not?

A. Required to do it by an Act of Congress.

Q. And you submit them as of October 1 each year?

A. That is correct.

Q. And if you will note the first three here are The Times-Picayune, The Times-Picayune-New Orleans States, and The New Orleans States, each one headed separately, of the [fol. 650] Publishing Company, for October 1, 1950, and I

just want you to look at them so that you can answer these questions.

A. I am pretty familiar with them.

Q. Mr. Tims, those show on those statements that you submit to the Post Office Department—What do they show as the publisher, on each one of them? Who is the publisher?

A. The publisher is The Times-Picayune Publishing Company of New Orleans, Louisiana, of The Times-Picayune, published morning, of The Times-Picayune-New Orleans States, published every Sunday, the publisher is The Times-Picayune Publishing Company. On the New Orleans States, published week-day afternoons, the publisher is The Times-Picayune Publishing Company.

Q. Well now, Mr. Tims, these show, among other things, the names and addresses of stockholders owning or holding one per cent or more of the total amount of stock in The Times-Picayune Publishing Company. Are those names the same on each one of those three reports that are submitted?

A. They are.

Mr. Flurry: May I interrupt? May it please the Court, I don't know what this line of examination is directed to. There is no contention there is any separateness in the ownership of the publisher of the different newspapers. I don't know what Mr. Wilson is getting to, but if that is all, why, there is no contention in this case, of that.

Mr. Wilson: Well, that saves a lot of time. Thank you, Mr. Flurry. We will not pursue the line any further. [fol. 651] There is only one other question I want to ask you with respect to it.

By Mr. Wilson:

Q. There are two names on these reports that are different, on the whole report, are there not? That is, between the Times-Picayune morning, The Times-Picayune-New Orleans States, Sunday, and the New Orleans States, evening; and the difference is just this: That Mr. Nicholson and Mr. Healy are shown on The Times-Picayune morning and The Times-Picayune-New Orleans States as being the Editor

and Managing Editor respectively, while on The New Orleans States Mr. Fitzpatrick and Mr. Allen are shown as the Editor and Managing Editor respectively?

Mr. Kramer: Objection, Your Honor. May I suggest he put the statements in evidence, rather than testify.

Mr. Wilson: I would be very glad to except I have one on here you might not want in, and that is the Item's. If you want me to put the whole works in I will be very glad to.

Mr. Kramer: May I examine the Item's and I will tell you whether I do. (Counsel examines documents.)

No objection, Your Honor.

By Mr. Wilson:

Q. Mr. Tims, you identified the first three of these. The fourth is the Item's statement, given to the Post Office Department as of October 1, 1950?

The Court: Does that add anything to the case? The [fol. 652] Item?

Mr. Wilson: It just happens to be on here. They asked me to introduce it so I am just going to offer the whole thing. It is glued together.

Mr. Kramer: I assume by not objecting now I do not waive the right to object to some more evidence along the same line, Your Honor. If my assumption is incorrect I had better reconsider.

The Court: Object to what? The Item?

Mr. Kramer: I hope my waiver of objection won't be interpreted as meaning we are not objecting to other evidence along the same line.

The Court: Very well.

A. Is the question that I know this is the Item's posting? It is a reproduction out of the Item's publication, showing what their Post Office report was. I had nothing to do with giving it to the Post Office Department.

Mr. Wilson: This is "14". If the Court please, I offer Defendants' Exhibit 14 at this time.

The Court: It will be admitted.

(The document referred to was marked "Defendants' Exhibit 14" for identification and received in evidence.)

By Mr. Wilson:

Q. Mr. Tims, you were asked about a change in rates that occurred on October 1, 1941, and you were shown a rate card for 1937, and I believe on October 1 rates went up over that rate card of 1937, did they not?

[fol. 653] A. I would have to refer to them again. I just can't keep that much in my mind.

Q. Well, I don't have them here.

Well, Mr. Tims, was there any difference in conditions in publishing a paper between 1937 and 1941?

A. What period of time was that question?

Q. I say, was there any difference in your operation, that is as to wages, newsprint, one thing and another, of your expenses between 1937 and 1941? Had you experienced any change in economic conditions?

A. I am sure we did.

Q. As a matter of fact, 1937 was just about the depths of the second depression, was it not?

A. It was pretty low.

Q. And 1941 was a boom time; just before we got into war, was it not?

A. I don't know if the real boom had started but it was starting anyway; inflation, or whatever you want to call it.

Q. You were asked again to compare your rates of 1941 against your rates of 1950. Had any change taken place in the economics of publishing a newspaper between 1941 and 1950?

A. Well, inflation has hit newspapers like it has everybody else: costs have gone up.

Q. Does that include wages?

A. Wages, materials,——

Q. Newsprint?

[fol. 654] A. ——newsprint, ink, mats, zinc, metal: everything that goes into producing.

Q. Mr. Tims, I believe you stated that on a few occasions you had written letters to advertisers or advertising agencies. Can you give me just a rough estimate of how many advertising agencies there are in this country?

A. I think there are over three thousand.

Q. Well, when you want to check on them, is this the book (indicating "Agency List") you use?

A. I would use it. I haven't looked at it in a long time though. Mr. Ladreyt would look at it. That would be the book I would use.

Q. And that is the Standard List of advertising agencies in the United States, is it not?

A. That is what it says: "Standard Advertising Register, Agency List." It shows the various agencies, in what section of the country they may be, and the accounts they handle.

Q. Now, there was some question about the setting up of these accounts as between the States and the Times-Picayune, and your own individual accounting. Actually that was set up, was it not, by Mr. Alvin Howard?

A. And with Mr. Leonard Nicholson. In 1933 Mr. Leonard Nicholson was President of The Times-Picayune Publishing Company. Mr. Alvin Howard was First Vice President and Mr. Yorke P. Nicholson was Second Vice President. I presume the three of them conferred on it.

Q. And in working out an accounting system they set it up with certain arbitraries in it? In other words, they [fol. 655] adopted arbitrary percentages of eighty-twenty on lots of categories, did they not?

A. That is correct.

Q. Those arbitraries had been carried through from the time that that was first adopted, back in 1933, or '34, right on up to date: the same arbitraries, had they not, all the way through?

A. To the best of my recollection.

Q. And the purpose of that was, was it not, to give you a comparative picture from year to year?

A. That is correct.

Q. And you kept the same method, not because it reflected anything except the difference between the previous year and the next year?

A. That is correct.

Mr. Wilson: I believe that is all.

Recross examination.

By Mr. Flurry:

Q. Mr. Tims, before you leave I turn to the transcript of the W. P. B. hearing and call your attention to the statement appearing on page 15. (Government Exhibit "G-103.")

The last full paragraph on page 15:

A. (Reading) Yes.

Q. Now, at that time, this was November, 1944, how many editions did you publish, or issues did you publish, in the Times-Picayune morning?—

A. I don't remember.

[fol. 656] Q. Is there any difference in issues and editions?

A. Well, I guess that is a question of terminology.

Q. I'm sorry; I didn't get your answer.

A. That is a question of terminology.

Q. Well, do they mean the same thing?

A. Issues or editions? I don't know. I may think one way; you may think another.

Q. Do you recall how many issues or editions the Times-Picayune morning carried at that time?

A. Now?

Q. Nine?

A. I mean, at this present time?

Q. In 1944.

A. I do not remember.

Q. Do you recall how many editions of the States you published at that time?

A. In 1944?

Q. Yes.

A. I do not remember.

Q. Of the Sunday?

A. I do not remember.

[fol. 657] Q. What you are actually saying here, Mr. Tims, was that the company was publishing thirteen issues a week in order to show the size, the number of editions, to the War Production Board, that you were publishing as a total, was it not?

A. I didn't get the early part of your question.

Q. I say, what you were, in effect, saying to the War Pro-

duction Board was that these are the total number of issues of paper published in a week by the company?

A. I don't remember what I said to the War Production Board. In 1944, the year you are speaking of, we were publishing the morning edition and evening edition and Sunday edition.

Q. Do you see anything inconsistent in this statement as to the total number of issues published by the company and your previous statement made on page 8 with respect to the fact that you had elected to keep the States as a separate paper?

A. I don't remember making it.

Q. Well, I am asking you to examine the two statements and see if you see anything inconsistent in those two statements.

Mr. Wilson: Well, now, I object to that question. I mean the witness isn't here to compare documents and decide whether he thinks they are inconsistent. If he wants to ask him as to whether he recalls the statement, all right, but I object to him asking him to compare the two statements.

The Court: Both of them are his own statements?

Mr. Wilson: He says he doesn't recall making them.

[fol. 658] The Court: Let him look at them.

(Witness examined the document.)

A. I don't remember either one of them.

By Mr. Flurry:

Q. Well, you have read the two paragraphs, have you not?

A. I didn't hear you.

Q. I said you have read the two paragraphs, have you not?

The Court: Which paragraphs are you referring to? One is on page 15, where is the other one?

Mr. Flurry: The other one is at the bottom of page 8. It shows here the witness said before the War Production Board that they elected, when they bought the New Orleans

States in 1933, "We elected to keep it as a separate newspaper."

The Court: All right. Proceed.

By Mr. Flurry:

Q. In your opinion, Mr. Tims, is there any inconsistency in the statement that you elected to keep the New Orleans States as a separate newspaper and the statement that you published, the company published, a total of thirteen issues a week?

Mr. Wilson: I object to the question on the grounds that the witness has testified that he doesn't recall making either statement.

The Court: I think the objection is not well founded. Assuming that you made it, or whether or not you made it, just take the two statements as they stand and say whether [fol. 659] you consider them inconsistent.

A. I don't see anything inconsistent.

By Mr. Flurry:

Q. Mr. Tims, you stated that in 1935, at the time you adopted the unit combination rate on classified advertising, there were one hundred twenty-five or more papers using unit rates. Do you recall what those papers were or where they were located?

A. I probably could name some of them. It would be rather difficult to name them all.

Q. Did you know at that time whether there were some newspapers in some cities going out of business because of a single unit newspaper in competition with a publisher of more than one newspaper with combination rates?

Mr. Wilson: Well, I object to the question. It is improper for recross examination. No such issue was opened at the time of the cross examination.

Mr. Kramer: Is that the sole grounds of the objection?

Mr. Wilson: Sole grounds.

Mr. Kramer: If your Honor please, this may be the proper time to raise a point that is going to face the Government when the time comes to rebuttal testimony, if such there

be. The Government, of course, thinks the original question was irrelevant. The Court has ruled otherwise, and the Court's view on a matter like this is decisive. The Government desires and has some witnesses—we don't know at the moment how many—who, if called to appear on [fol. 660] rebuttal, would testify as to the effect upon those combination rates in these other cities where there were competing newspapers. At least one of these witnesses is located at a distance in excess of fifteen hundred to two thousand miles from New Orleans, in San Diego, to be exact. It would cost the Government some five hundred dollars to bring him here and it would be of some inconvenience to him. Nevertheless, we regard it, under our theory, of course, very important. Therefore, this is perhaps the time to inquire whether the evidence will be admitted or not, or we can simply make a proffer or make a statement later prepared as to what he might testify to, and Your Honor might then advise us.

The Court: I suggest that you do that.

Mr. Kramer: Thank you, Your Honor. We will undertake to do that over the weekend. I think I interrupted Mr. Wilson——

Mr. Wilson: I made my entire objection on the grounds that it is improper cross examination.

The Court: The objection is overruled.

Mr. Flurry: Will you read the question, please?

(Question read by reporter.)

A. Not to my knowledge.

By Mr. Flurry:

Q. Did you determine at that time what the nature of the combination rate in effect in those one hundred twenty-five cities was, or newspapers rather than cities?

A. I don't recall, it has been so long ago.

The Court: Affect them in what respect? You mean [fol. 661] affect the income of the newspapers involved?

Mr. Flurry: No, Your Honor, I think Your Honor misunderstood my question. Read it again, please.

(Question read by reporter.)

The Court: You say what rates were in effect rather than the affect of the new rates?

Mr. Flurry: That is right, Your Honor.

By Mr. Flurry:

Q. Do you know whether or not all of those newspapers were using the same sort of rate which the Times-Picayune Publishing Company adopted at that time for classified advertising?

Mr. Wilson: Well, now, I object to the question on the grounds that it has been previously ruled in pre-trial conference that that information is irrelevant and immaterial to this lawsuit. I now object to the question on the grounds that it is irrelevant and immaterial and incompetent.

Mr. Flurry: May it please the Court, Mr. Wilson opened that on his examination of the witness. I think as a matter of recourse, we should have the right to go into an examination of that or else that we should have the right at a later date, after Your Honor has ruled after the pre-trial conference.

The Court: As I understand it, this goes to the question of this witness' knowledge with respect to the putting into effect of the combination rates in other cities?

Mr. Flurry: That is right, Your Honor, and our contention [fol. 662] is that if it is relevant to show intent on the part of defendants to show what happened in these other places it is relevant to show as to the defendants' action with reference to these other things at the time they were adopting the unit combination rate.

The Court: Let's hear the last question.

(Question read by reporter.)

The Court: I see no objection to that. Overrule the objection.

A. You mean the approximate number of papers that had a morning and evening rate?

By Mr. Flurry:

Q. Yes, had a morning and evening rate.

A. I presume they were using the morning and evening rate, approximately one hundred twenty-five, I said.

Q. Well, do you know that they were, or did you know at that time that they were?

A. I am pretty confident I did know that they were using the unit rate.

Q. You are not sure whether you did or not?

A. Just the exact number of them?

Q. Yes, the number who were using the combination rate at the time you adopted the unit combination rate on classified advertising.

A. No, I wouldn't remember the exact number of them.

Q. So that when you said one hundred twenty-five or more, you didn't know whether that was correct or not?

[fol. 663] A. That is correct. I was just guessing.

Q. I will ask you again, did you know whether or not the classified rate which was in effect in those papers in 1935 to which you referred was the same sort of a combination rate as that which you adopted?

A. Yes.

Q. Did you examine the rate structure of other newspapers to determine that?

A. Well, that has been a good many years ago, Mr. Flurry. I can't remember to answer your question accurately.

Q. You understand I am referring only to classified advertising?

A. I understand that.

Q. Now, when you went to the unit combination rate on general advertising in 1950, I believe you testified that there were one hundred fifty to two hundred papers using it?

A. Approximately. Between one hundred fifty and two hundred.

Q. Did you know at that time what those papers were?

A. All of the newspapers?

Q. Yes.

A. A good many of them, I knew who they were. I had

Mr. Ladreyt compile a list for me out of Standard Rate and Data.

Q. When was that?

A. I don't recall just when.

[fol. 664] Q. Was it at the beginning of these conferences with reference to the adoption of the unit combination rate?

A. No, it was back for a good number of years.

The Court: Let me make this inquiry: is it the Government's position that defendant did not know what rates other newspapers over the country were charging at that time?

Mr. Flurry: No, Your Honor. They are, as I understand it, contending that the showing of the fact that numerous other newspapers were doing this at the time they adopted these rates in order to show the intent.

The Court: Well, I understand that, but is it the Government's position that numerous other newspapers were not doing this, because I would think that I would be justified in taking judicial cognizance that if numerous other newspapers were doing it, that this newspaper knew about it. As a matter of fact, with respect to the classified ads, it has been developed here this morning that the Item was doing it as early as 1935. I am sure the Times-Picayune knew about it if the Item was doing it, two blocks away. I would just like to know what the purpose of this examination is. Is it the Government's contention that other newspapers were not invoking the forced combination rate, or is the purpose really to show here whether these people had knowledge of the fact or not?

Mr. Flurry: For the purpose of showing whether or not they acted with knowledge.

The Court: That others were doing likewise?

[fol. 665] Mr. Flurry: Yes, sir. In other words, whether or not that was the reason for taking the option or whether it was for some other reason.

The Court: All right. Go ahead. But I think it would be a very strange circumstance if they did not know about it, from all the services and books and so forth I have seen.

Mr. Kramer: Since you have mentioned the Item's classified rates, I would like to state to the Court or recall to the

Court, if I may, the fact that it is not our contention on our Motion for Partial Summary Judgment that a unit combination rate is, per se unlawful where there are two competing newspapers in the community, each furnishing a morning and afternoon edition—two competing newspaper publishing companies, each publishing a morning newspaper and an evening newspaper. Our per se argument during the Summary Judgment was limited to the dominant newspaper situation in the morning or evening and the two competing in the other.

The Court: I understand that. I just didn't understand this line of questioning as to the questioning of knowledge only.

By Mr. Kramer:

Q. Mr. Tims, did you make a study at that time to determine the fact as to whether or not the rate which you were considering adopting was the same as that in force in other cities with respect to unit combination on general advertising?

A. The rate, naturally, was different. I think Mr. Ladreyt made an analysis of the standard rates, which he [fol. 666] does all the time, over a period of years, and then went back to take what the milline rate would be to show just how attractive a buy it would be. The object of putting in our unit rate when we did was that we would either put the unit rate in all the way from the ten thousand line bracket up, because it was then from the ten thousand line to the fifty thousand line, or increase the individual rate, and it was our judgment that this would produce more revenue for the Times-Picayune Publishing Company the way we did it.

Q. I believe you testified that the Times-Picayune Publishing Company was then the exception with respect to having unit combination rate?

A. That is correct.

Q. Could you tell me approximately how many newspapers there were, daily newspapers of general circulation, there were in the United States at that time?

Mr. Wilson: You mean publishing both morning and evening editions or just publishing——

Mr. Flurry: No, I asked him how many newspapers there were in circulation.

A. I would have to refer to Editor and Publishers. I can't recall just how many newspapers there were.

By Mr. Flurry:

Q. Would you have any idea as to the number?

A. No.

Q. It certainly would be a number of times more than one hundred fifty or two hundred, would it not?

[fol. 667] A. There is more cities than that in the United States.

Q. Have you in your files a copy of the study made by Mr. Ladreyt?

A. I don't think so. He may have it.

Q. Was that study made up in writing?

A. I think it was typewritten.

Q. Will you please examine your files and produce that if it can be found?

A. (Nodding head affirmatively.)

Q. Now, do you know how many newspapers there were in the United States in 1950, at the time you adopted the unit combination on general advertising, who published more than one newspaper daily?

A. Do I know—repeat the question.

Mr. Flurry: Will you read the questi-n?

(Question read by reporter.)

A. No, I can't recollect.

Q. Would there be more than two hundred in your opinion, Mr. Tims?

A. Two hundred newspapers being published in the United States?

Q. With more than one newspaper daily.

A. Do you mean one publishing company publishing more than one edition?

Q. Yes.

A. I don't know. I would have to go look at the records [fol. 668] on it. I think that there are. You are sitting there with a memorandum pad, and I am sitting up here

trying to get these questions and answer them if I can and you go from third base back to first. I think I can answer your question.

At the time, did I know the number of cities where one publishing company was publishing more than evening and Sunday editions. Is that the question?

Q. The number of newspaper publishing companies which were publishing more than one newspaper, that is, two or more newspapers in the same city on a daily circulation.

A. Let me answer it this way——

The Court: You call them newspapers and he would prefer to call them editions.

Mr. Flurry: We will treat it either way you wish, Your Honor.

A. Let's see if I can clarify it. I would say between one hundred fifty and two hundred publishing companies in various cities were publishing a morning, evening and Sunday edition. Does that answer it?

The Court: Gentlemen, it is apparent that the examination of this witness will go on for some time yet, will it not?

Mr. Flurry: Yes, Your Honor. We have some questions with reference to these charts and we would like to have a little extra time at noon to consider whether or not there is certain other information which we could have from the defendants in order to make a proper study of the charts. [fol. 669] We would like to have a few extra minutes for that purpose.

The Court: Court will be at recess then until 2:15.

(Whereupon a recess was taken at 12:30 P.M. until 2:15 P.M.)

[fol. 670] AFTERNOON SESSION

(The trial resumed, pursuant to recess, at 2:15 P.M.)

(Mr. Tims resumed the witness stand, on recross.)

By Mr. Flurry:

Q. Mr. Tims, how long have you known Mr. Kelley, of Jann & Kelley?

A. A good many years. Just how long, I couldn't say.

Q. Are you familiar with his experience in the advertising field?

A. Well, he used to be with some other publishers representative before he was employed by Noeé, Rothenburg & Jann.

Q. Have you had occasion to consult Mr. Kelley at various times with respect to advertising problems?

A. Yes, from time to time.

Q. Would you consider that his opinion, or statements upon competing media, is an accurate statement of what existed in the industry?

A. Well, I don't know.

Mr. Wilson: Well, I suggest that the statement be made to Mr. Tims and ask him if he agrees with it. I frankly don't recall it myself.

The Court: I think that is asking him, is every statement he makes accurate.

A. I wouldn't know if it is or not, Your Honor.

By Mr. Flurry:

Q. Well, if he made a statement to you with respect to the [fol. 671] competitive situation in media in New Orleans, would you consider that statement authoritative upon that subject?

A. It depends upon what the statement would be.

Q. I believe you testified this morning, Mr. Times, with reference to your unit combination rate in general advertising that the magazines had entered the New Orleans market. I will ask you to read the second from the last paragraph of Government Exhibit 45, dated November 26, 1949, sent out to all offices of Jann & Kelley, with respect to that combination rate, and a copy to you and Mr. Ladreyt.

A. (Reading document.)

Q. Do you agree with the statement made by Mr. Kelley that "this additional pressure is very much in order not only because the market has grown in the last ten years but perhaps more important, the national magazines have not penetrated the New Orleans area sufficiently in the last twenty-five years to put it on a par with other markets

which have enjoyed millions and millions of magazine impressions."

A. I think Mr. Kelley can answer that better than I can, but I believe what he meant——

Q. I am asking if you agree with that statement.

A. I am trying to explain what I think he meant. He wrote that to his various offices and sent a copy of the letter to me, and Mr. Ladreyt. I sent my letter immediately, which I do of all correspondence addressed to me, over to Mr. Ladreyt. I am trying to give you what my interpretation meant. If that is the same as he meant; we may be in agreement.

[fol. 672] Q. Well, do you or do you not agree with that statement? That magazines have not penetrated this market as they have in other places.

A. Well, I think the—I haven't got the magazine breakdown of Life or Saturday Evening Post or Ladies Home Journal before me, but I believe that this is correct: Let's take the Ladies Home Journal: they have less circulation in New Orleans, as I recall it, than they would in Cincinnati, Ohio. I think that is what was meant by it. If that is what his letter means, I agree with him.

Q. Now, this morning you stated to Mr. Wilson that, in answer to Mr. Wilson's question, that you were only concerned with the net profit figure appearing in the first column of the Annual Reports for 1947, '48 and '49, showing the consolidated net profit of the entire operations of the company. Isn't it a fact that you are interested, also, in the showing of the Radio Station and each of the newspapers, as General Business Manager?

A. Yes; we are interested in what is going on in the Radio Station and how our set-up has been made on an arbitrary basis, as far as the evening and the morning is concerned.

Q. Have you not taken note of those results as shown by the Auditors' report, from time to time?

A. In what respect?

Q. With respect to determine whether or not the business is operating successfully?

A. In my opinion they are operating successfully.

Q. Well, did you take note of the Auditors' figures, showing——

[fol. 673] A. You mean a penciled note, a mental note, or what?

Q. Actual physical note of it: a mental note.

A. A mental note: in passing. That is all.

Mr. Flurry: Now, may it please the Court, we have certain basic questions here which we think we should ask the witness, as a foundation for the Government's study of the charts.

Mr. Wilson: May it please the Court, perhaps I can help here a little bit. Mr. Adams, I think, brought over all those work papers that Mr. Houghton wanted.

(Documents produced to Government counsel.)

By Mr. Flurry:

Q. (Handing charts to witness.) Now, Mr. Tims, does each of those charts cover the same period of time?

A. To the best of my knowledge.

Q. What period of time do they portray? The information.

I believe they are Defendants' Exhibit Nos. "D-5" through "D-13."

A. As far as the physical plant is concerned, it was, at the time the chart was made, and I am quite sure the number of employees were taken from the payroll of that particular date, which I am sure was within the last three weeks.

Q. Well, I just want to know the period of time covered by each of the charts.

A. I think it was made at approximately the same time. One chart, naturally, had to be made before the other.

[fol. 674] Q. Well, was that 1951?

A. Yes, that is correct.

Q. Now, that is with respect to the charts representing the space on each floor. Is that right?

Mr. Wilson: To all of it.

A. All of it.

By Mr. Flurry:

Q. Well, do Charts 5 and 6, with respect to the employees, and the Chart 6, which refers to the financial values?

A. Which one are you talking about now?

Q. 5 and 6. What period of time do they cover?

A. I believe that this is from the employees on the payroll at that particular time. It was during the past two or three weeks, I imagine.

Q. What I want to get clear, Mr. Tims, do Charts 5 and 6 represent the status at a particular date or does it cover a certain period of time?

A. Chart 5, to the best of my recollection, was taken at the time that I asked that this study be made. I presume it was made from that payroll at that particular time.

Q. In other words, it is a payroll on a particular date?

A. A weekly payroll. We haven't got an individual daily payroll.

Q. Well, for a particular week.

A. Week ending, yes.

[fol. 675] Q. Could you tell us what week that was?

A. No, I could not.

Q. Who would have that information?

A. Mr. Lagarde, the Auditor. The pages shown on those work sheets that Mr. Wilson handed you a moment ago.

Q. Now, referring to defendants' Chart 5 and more specifically to the bar representing the employees in the press room, on what basis was it determined under your supervision that fifty-five employees were engaged in the preparation of the morning and afternoon edition as distinct from seven employees in the press room who were working on the Sunday edition only?

A. Well, the fifty-five employees are not only on the morning and afternoon but on the morning, afternoon and Sunday. You stated on the morning and afternoon. The Chart reflects morning, afternoon and Sunday. The bar showing the green in the center of the press room are employees that print the Sunday Comics that only go into the Times-Picayune and New Orleans States.

Q. What I want to know is the basis which you use for

that distinction between the seven and the fifty-five employees.

A. These seven men on the color press confine their work entirely on the color press to printing the Sunday magazine sections.

Q. And the fifty-five includes all others?

A. All others, machinists that work on all presses.

Q. Now, how much of the time of those fifty-five employees shown in the bar referring to the press room was devoted to the morning as distinct from the afternoon [fol. 676] editions.

A. I can't tell you.

Q. Well, do you have workers in the press room working for the two separate editions?

A. Yes. They work on one edition and they go over to another edition. I will illustrate for you, may I?

Q. Yes.

A. When we come to printing our home edition, or the afternoon edition, we will have a crew that will come on at around one o'clock. They go on and print it and another crew comes on at 8:00 o'clock for the carrier edition that we use two presses and then a crew comes on at 2:00 o'clock to get out the pup edition or the morning edition.

Q. Now, referring to the bars on Chart 5 including composing rooms, photo engraving, stereotype and classified, I believe they all appear in the first tier of bars, do they not?

A. Yes, they do.

Q. Will you explain on what basis the work load was distributed as between the morning, afternoon and Sunday editions of the paper?

A. The work load?

Q. Yes.

A. I will explain it the best I can. For instance, let's take today. Today is Friday and the States' crew, that is up there correcting ads and making up three of the Sunday sections that will be printed tonight in the Times-Picayune: [fol. 677] Q. Now do you have separate employees working on the respective papers in those first five departments?

A. Separate employees? We try to break it down on the payrolls just in an arbitrary manner, but they are doing work for all of the editions.

Q. Well, I am referring specifically to the chart. Was that true with reference to that chart?

A. As far as the composing room, photo engraving room, the stereotype room, and you spoke of forty-one of the forty-three classified employees.

Q. Now, do I understand you correctly—because we have got to use this information—that you do have separate employees working separately in those divisions for the different editions?

A. I don't think I quite follow your question. Take the composing room or the photo engraving room or the stereotype department, men there are doing work for all three editions.

Q. At the same time or at different times?

A. We had this morning some color ads, Times-Picayune. They went on the States yesterday afternoon or during the day yesterday, made all the stereotype plates. As an illustration, if you have a four-color job and you use the two presses, it requires you to have to have sixteen plates made, so they can expedite that in the day time, get ready to put those on the press for the first pup edition of the Times-Picayune.

Q. Now, do your payroll cards show the time that is used [fol. 678] by the employees where they are ordinarily doing work for one paper and they do some special job or something for the other paper?

A. No, sir. I think that your records will show that we have what we call the day stereotype department and a night stereotype department or night shift, but this chart demonstrates that while we have two separate payrolls, the morning shift and the evening shift in the stereotype department, they are all contributing to producing the three editions.

Q. Well, now, how does the chart demonstrate that? You said the chart demonstrated it.

A. Maybe I used the word "demonstrate", but that is the factual operation. You may come over and we will be glad to bring you around and let you see for yourself, Mr. Flarry.

Q. We may have to do that, Mr. Tims.

A. That is all right.

Q. Now, I note that on the chart you have made a distribution for the employees in the circulation department, the mail room, and the editorial departments, have you not?

A. That is correct, Sir.

Q. Now, will you explain to us why you made a distribution of your employees in those departments and not those listed in your left hand column which are the composing room and so forth?

A. We have got in the circulation department a total of one hundred seventy-nine employees. Ninety-nine of them confine their work to the morning, afternoon and Sunday editions. Twenty-nine confine their work to the morning [fol. 679] and Sunday editions, thirty-nine confine their work to the afternoon and Sunday editions, and twelve confine their work entirely to the Sunday edition.

Q. Does this data which Mr. Wilson has mentioned, which was handed to us, does that contain the basic data for all of these charts and each of them?

A. I would think so.

Q. Have you made a time study of the work for the various editions of your newspaper?

A. A time chart.

Q. Time study.

A. No, not that I know of.

Q. Upon which these charts are based?

A. No.

Q. Will the work sheets show all of the figures used in the makeup of the charts so that we may be able to check those?

A. I presume so, but I wouldn't want to say accurately that they do. I haven't looked at the work sheets.

Q. Are these charts based on a different allocation than that which has been shown in the Audit Report?

A. You mean Haskins & Sells or the company's own operating statement?

Q. Yes.

A. Yes. This would show different because naturally you have there showing the composing room where we had [fol. 680] broken down the day side and the night side. This chart is endeavoring to show that while we have a day shift and night shift, they are all contributing to all the

editions. Tonight we may have some copy that will be sent up to the composing room for the States' first edition tomorrow. That will be set by linotype operators that are on the night shift.

Q. Have those allocations which went into the makeup of the chart been made by someone with the Times-Picayune Publishing Company or by some accountant?

A. They were made by the auditor and then he turned the information over to the promotion department, Mr. Burke, to fix the chart.

Q. Who was the auditor?

A. Mr. Lagarde.

Q. May we contact him in case we want an explanation of it?

A. Gladly, Sir.

Q. How does Mr. Lagarde spell his name?

A. J. H. L-a-g-a-r-d-e.

Q. Now, have you used in the make-up of these charts the statements which were furnished to the FBI for the Government?

A. I just don't know what statements were furnished to the FBI. I tried to find out——

Q. Could we have——

A. Let me complete. I don't know what we furnished the FBI. I brought them in and introduced them to my auditor, Mr. Frank, and told him anything that Mr. Frank wanted to give him. I had to go out of town and I asked [fol. 681] Mr. Frank, after he had completed it, if he would give me an opportunity to make a photostat of it, why, it would facilitate it to know what we were talking about. He said he would have to take it up with you, and about a week later that Mr. Flurry had declined the request that I made of Mr. Frank.

Q. Would Mr. Lagarde be able to give us information as to the variations between what you used in the make-up of the charts and the FBI statements? The statements furnished to the FBI.

A. I am sure that the statements furnshed the FBI were from our actual records, and they, the FBI, secured our payroll which shows the morning shift and the evening shift and those same payrolls reflect that. Then when we

made the study through the department heads as to how these people worked around the clock, this was the result of it.

[fol. 682] Q. Now, does the basic data which has been handed to us include pay roll cards for the week which you used?

A. I haven't looked at the basic data, Mr. Flurry.

Q. Will they be available to us if they are not included in there.

A. If there is anything that you wish, it is available to you, sir.

Q. Thank you, Mr. Tims.

Mr. Flurry: If the Court please, we should like the privilege of reserving any further examination of Mr. Tims with respect to the charts until they are put in later.

Mr. Wilson: I will take care of that.

I now offer, on the basis of the examination that has been made, Defendant's Exhibits 5 through 13, inclusive.

Mr. Flurry: We object, Your Honor.

The Court: What is the objection?

Mr. Flurry: Pardon me a moment.

Your Honor, we have not had an opportunity to check the charts and we should like to have the admission of them reserved until we have done that. We don't know whether there will be any objection to them or not, but we certainly would not like to admit them, without it.

The Court: I will sustain the objection at this time.

Mr. Wilson: If the Court please, as I understand it, the objection is only sustained until the Government has an opportunity to check the accuracy of the charts.

The Court: That is right.

[fol. 683] Mr. Wilson: All right. There is no further examination.

(Witness excused.)

Mr. Turnage: Mr. McChesney, please.

BEDFORD MCCHESNEY, a witness called by and on behalf of the Government, being duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Turnage:

Q. Will you please state your full name and address.

A. Bedford McChesney. My home address is 1547 Harcourt Drive. That is in Parkchester.

Q. What is your occupation or business, Mr. McChesney?

A. I am general manager for Dutch O'Neal Motors.

Q. Where is Dutch O'Neal Motors located, Mr. McChesney?

A. You mean, in Louisiana?

Q. Yes, sir.

A. We are at 3934 Tulane Avenue and also at 1700 Airline Highway.

Q. Is the Dutch O'Neal Motors located in other areas outside Louisiana?

A. Yes, sir.

Q. What states?

A. We operate in Arkansas and Tennessee.

Q. Who in the Dutch O'Neal Motors has charge of placing advertising?

[fol. 684] A. Well, I supervise the advertising in all of the places.

Q. Is that true also of New Orleans?

A. Yes, sir. I write most of the ads for New Orleans.

Q. Do you place advertising in New Orleans newspapers?

A. Yes, sir. I do.

Q. What type advertising do you place in there? By that, I mean, classified, local display or general.

A. It is mostly classified. We do some display advertising, but I would say 95 per cent of it is classified advertising.

Q. Mr. McChesney, what newspapers in the City of New Orleans are you using for your classified advertising?

A. I use the Times-Picayune and the States. That is the other paper of the Times-Picayune, and also the Item. I believe that is correct.

Q. Can you purchase the Times-Picayune to the exclusion of the States? Or the States to the exclusion of the Times-Picayune?

A. I am told, not. I have asked the ads man that and I was told if you bought the morning paper, you had to take the States with it in a combination or something. I don't know what it is.

Q. Has that requirement had any effect upon your selection of media for classified advertising?

A. Well, as an automobile dealer, we set up a certain fund or, I would say, we allot a certain amount to advertising. Naturally, we try to buy an afternoon and evening paper.

I would say that, inasmuch as I have to buy the States, I [fol. 685] do cut some advertising, possibly, out of the Item that I would give it, as far as public relations is concerned, because we sell automobiles to everyone, not just one newspaper.

Q. Does the Times-Picayune give you good coverage?

A. Well, I would say, "Yes".

Q. Do you desire the Times-Picayune, morning paper?

A. Yes.

Q. Do you desire the States, afternoon paper?

A. No. I would buy the Item, because I think you get a different class of readers in the Item than you do the States.

Q. Do you feel that the Item duplicates the Times-Picayune?

A. Yes. In my personal opinion, it does. Of course, technically, I don't know that.

Q. You feel the Item duplicates the readers of the Times-Picayune?

A. No. I wouldn't say the Item. I would figure the States would duplicate it.

Q. You think the States duplicates it?

A. Yes, sir.

Mr. Turnage: Your witness.

Cross examination.

By Mr. Phelps:

Q. Mr. McChesney, do you have a contract with The Times-Picayune Publishing Company for classified advertising?

A. Yes, sir.

[fol. 686] Q. What is your contract rate?

A. I just couldn't recall right offhand.

Q. You are not interested in the cost?

A. Yes. I am interested in the cost, but I have different contracts with different papers. I don't know if I have 50,000 or 100,000 lines.

Q. You don't remember your contract rate?

A. No, sir. I couldn't tell you offhand. I have contracts with most of the papers.

Q. You pay one rate for morning and evening editions, don't you, with the Times-Picayune?

A. Yes, sir. I believe so.

Q. You don't know, of course, what portion is allocated to the morning edition and what part is allocated to the evening edition, in so far as the amount of money you pay in, do you?

A. You mean, me, personally?

Q. That is right: the money you pay in.

A. No. I don't have it divided out that way; but we try to cover both papers, because we are in the automobile business and want to sell to everybody.

Q. You wouldn't have any idea as to what the advertising would cost you if you had to advertise in the morning edition, only, would you?

A. No, sir.

Q. You don't know if it would be the same or approxi-

[fol. 687] mately the same as what you are paying now?

A. No, sir.

Q. So, you don't know what the advertising you get in the States is really costing, do you?

A. No, sir. I haven't had anyone to break it down for me.

Q. You simply buy it as a unit?

A. Yes.

Q. And you have bought color pages in the Item?

A. Yes, sir.

Q. So that you use the Item when it serves your purpose and you use the Times-Picayune-States when it serves your purpose?

A. We use both papers.

Q. You use the Item substantially don't you?

A. I have talked to the Times-Picayune about a colored ad, but their rate was so high that I didn't feel I wanted to spend that kind of money for it.

Q. So, you used the Item?

A. Yes.

Q. And you have no basis for your opinion that there is greater duplication between the Times-Picayune and the Item—between the Times-Picayune and the States than between the Times-Picayune and the Item, have you?

A. It is my own personal opinion, and I don't imagine it would be very good.

Q. You say, it would be very good?

[fol. 688] A. I wouldn't want to base it on that. It would be my personal opinion.

Q. Isn't it a fact that Dutch O'Neal normally buys a second paper in most communities in which it does business?

A. No, sir. It isn't.

Q. You do business in Tennessee, too, don't you?

A. Yes, sir.

Q. You didn't mention that?

A. Yes. I did.

The Court: Arkansas and Tennessee?

The Witness: Yes.

Mr. Phelps: We have no further questions.

The Court: If the forced combination rate were not in effect, would you take the States?

The Witness: No, sir. I don't believe. I would.

The Court: You say, you don't believe you would?

The Witness: I know I wouldn't.

The Court: You mean, you would advertise in the Picayune and in the Item?

The Witness: Yes, because—Could I make a statement? Is it out of order?

The Court: It depends on what the statement is about.

The Witness: The only reason I say that: We are in the automobile business and they have a lot of employees at the Item. We want to sell them cars. There are a lot at the [fol. 689] Picayune and we want to sell them cars, too. In other words, I believe in spreading it around.

Redirect examination.

By Mr. Turnage:

Q. Mr. McChesney, in view of His Honor's questions to you, have you ever complained to The Times-Picayune Publishing Company over having to run in the States?

A. Yes, to the caller, the fellow that picks the ads up. Dutch Phleiger, I believe, calls on me.

At one time, I told him that I didn't want to take the States and he said, "You have to take it".

I said, "If I have got to take it, I have got to take it."

Q. Who is Dutch Phleiger?

A. He is a representative of the Times-Picayune.

Q. He calls you and sells you advertising?

A. Yes.

Mr. Turnage: That will be all.

Mr. Phelps: One more question.

Recross examination.

By Mr. Phelps:

Q. As a matter of fact, you had some personal altercation with the Times-Picayune over your account, didn't you?

A. I had some?

Q. Didn't you have some difficulty over your accounts?

A. No, sir, not that I can recall.

Q. Try and recall if you didn't have some dispute with [fol. 690] The Times-Picayune Publishing Company. Think back.

A. I, personally, had some dispute?

Q. You or your agency, Dutch O'Neal.

A. No, sir. I don't ever remember having a dispute. You mean, over an account? Or what? What is it about?

Q. If you don't remember, that is your answer.

A. No, sir.

Q. And your statement is that you would buy the Times-Picayune and the Item, irrespective of what the cost would be, if the Times-Picayune and the States were sold separately? Is that correct?

A. Well now, you say, "irrespective". No, if they jumped the price in the Times, where it was out of reason—I mean, on the Item—naturally, I wouldn't. If the rates were the same as they are now, I would buy it.

Q. What is your contract rate? Let's go over that again.

A. I couldn't tell you, sir. It is nineteen, sixteen or nineteen cents.

Q. If it were 19 cents a line and your rate in the Picayune would be 16 cents a line, it would only cost you 3 cents a line extra to add the States.

Do you mean to say you would take the Item in preference to the States?

A. Yes, uh-huh, because I think——

Q. Cost is no object to you. Is that correct?

A. Coverage is what I am after.

[fol. 691] Q. You are after coverage?

A. Yes, local coverage.

Q. So that your statement is based entirely on your personal opinion with respect to duplication?

A. Yes, sir.

Mr. Phelps: We have no further questions.

Mr. Turnage: We have no further questions.

The Court: Just a minute. You said that you would advertise in the Item and in the Picayune because you want to spread it around, because you would expect to sell automobiles to the employees of both those papers.

The Witness: Yes, sir.

The Court: What about the employees of the States? Do you expect to sell them automobiles, too?

The Witness: I understand it is all the same thing.

The Court: You consider the Picayune and the States as one? Is that it?

The Witness: Yes, sir.

The Court: All right, sir.

(Witness excused.)

BENNIE JEANSONNE, a witness called by and on behalf of the Government, being first sworn, was examined and testified as follows:

Direct examination.

By Mr. Turnage:

[fol. 692] Q. Will you please state you full name and address.

A. Bennie Jeansonne, 934 City Park Avenue.

Q. What is your occupation or business?

A. Real estate broker.

Q. What is the name of the real estate agency?

A. Eason & Jeansonne.

Q. Pardon me.

A. Eason & Jeansonne.

Q. Spell it.

A. E-a-s-o-n & Jeansonne.

Q. What is your connection with Eason & Jeansonne.

A. Partner.

Mr. Kramer: I can't hear.

The Witness: Partner.

Mr. Kramer: Would you keep your voice up a little bit, please.

By Mr. Turnage:

Q. Mr. Jeansonne, how do you present your listings to potential buyers?

A. Through newspaper advertising.

Q. Are you at the present time placing ads in New Orleans newspapers to present your product or your listings?

A. I am.

Q. What newspapers are you using in the City of New Orleans?

A. All of them.

[fol. 693] Q. Did you say, all three of them?

A. All three.

Q. Will you name those three?

A. Picayune, States and Item.

Q. Mr. Jeansonne, can you purchase the Times-Picayune, exclusive of the States? Or the States, exclusive of the Times-Picayune?

A. No.

Q. Have you ever made any attempt to do that?

A. Yes.

Q. What effect, Mr. Jeansonne, does this requirement that you must take both papers have upon you in your selection?

A. Well, we are budgeted as to the amount of money we can spend on advertising, and we feel that the Picayune is the morning newspaper and I, personally, prefer the Item as the afternoon newspaper.

Q. If you were not required to purchase the New Orleans States, would you purchase it?

A. No. I don't think I would.

Mr. Turnage: Your witness.

Cross examination.

My Mr. Phelps:

Q. Mr. Jeansonne, what is your contract rate with the Times-Picayune?

A. Twenty-five cents a line.

Q. And do you have any idea what portion of that would be allocated to the morning edition?

[fol. 694] A. No. I don't.

Q. So that you don't know what it would cost you to have your same advertising in the morning edition if you didn't have to, as you say, put it in the evening States?

A. No, sir. I don't.

Q. Well, assuming that your morning advertising would cost you 20 cents a line, would you still prefer to buy the Times-Picayune and the Item?

A. I would think I would.

Q. Would you explain to us what your reason for that is?

A. I think I just mentioned that I particularly prefer the Picayune as a morning newspaper and I prefer the Item as an afternoon newspaper, because the same people, to my estimation, that take the Picayune get the States.

Q. In other words, you think there is more duplication?

A. I think so.

Q. And I suppose cost is not an element in your consideration?

A. Oh, yes. It is.

Q You do use the Item, though?

A. Yes, sir.

Q. As a matter of fact, can't you pretty well divide your advertising up between the Times-Picayune, States and Item?

A. We have been.

Q. And that is what you are doing right now?

A. We are doing that at present.

[fol. 695] Q. And you buy the Item on its own merits, don't you?

A. That is right.

Q. As a matter of fact, you and your partner alternate in buying at your partnership, don't you?

A. Alternate in buying what?

Q. Buying advertising space in newspapers.

A. We do.

Q. And you buy one month and he buys the next?

A. No. He probably would buy for a year and then I will buy the next year.

Mr. Phelps: We have no further questions.

Mr. Turnage: That will be all, Mr. Jeansonne.

(Witness excused.)

Mr. Leonard: Mr, Hussey, please.

ALVIN M. HUSSEY, a witness called by and on behalf of the Government, being first sworn, was examined and testified as follows:

Direct examination.

By Mr. Leonard:

Q. Will you state your name for the record, please.

A. Alvin M. Hussey.

Q. How is that spelled?

A. A-l-v-i-n M.-H-u-s-s-e-y.

Q. Where do you live, Mr. Hussey?

A. 5555 Woodlawn Place in Lakeview.

[fol. 696] Q. In which parish is that, please?

A. Orleans Parish.

Q. And what is your occupation, please?

A. Automobile dealer.

Q. Have you been in the automobile business for some time?

A. Thirty-four years.

Q. What is your present business location?

A. 7211 Canal, near Broad.

Q. And what is the name of your Company?

A. Hussey-Eagan Motors.

Q. In your business advertising in the use of classified advertising, Mr. Hussey, can you tell us what New Orleans newspapers you use at the present time?

A. Times-Picayune and States.

Q. And are you required, as a classified advertiser, to have your advertisements appear in the morning Times-Picayune and in the afternoon States?

A. I am, yes.

Q. You understand that you are not permitted to purchase either the morning paper or the afternoon paper, by itself?

A. Well, I was told. I never did inquire.

Q. If you were not required to purchase the morning Times-Picayune and the afternoon States, as a unit, how would you prefer to place your afternoon advertising?

A. I would stay in the Picayune for seven days in the [fol. 697] week in the morning and then I would probably split my advertisement in the States and in the Item What I mean by that: I would go in the Picayune every morning and then I would probably go three days a week in the Item and four in the States, but I would only stay in one afternoon paper once a week.

Then, the next week, I would drop back to four days in the other afternoon paper, but I would stay in the Picayune at all times.

I would do that for the simple reason that I couldn't afford—From past experience of thirty-three years that I

have been in the automobile business, I couldn't afford to stay out of the Times-Picayune, because I think it would jeopardize my business from the standpoint of revenue.

Q. So that you regard the morning Times-Picayune as a must in your business?

A. I do, yes.

Mr. Leonard: You may cross examine.

The Court: What papers do you use now? All three? Or what?

The Witness: I use the States and the Picayune, and Mr. Leonard, I would like to say this: At the time the man from the Department of Justice came out and interviewed me, I think sometime in March, to the best of my recollection, and then later on he came back and seen me and he had a prepared statement for me to sign. In that statement, he put the reason why I discontinued the use of the Item, the reason why I discontinued the use of the Item to go in the [fol. 698] States, which is not true. I didn't discontinue the Item for that reason.

I discontinued the Item because I know from past experience that the Picayune and the States is the paper that I want to spend my money in. I also told him I wouldn't go on the radio and stay out of none of the papers, because I couldn't jeopardize my business.

Mr. Kramer: We would like to produce the statement to defense counsel.

Mr. Wilson: Just a moment. May I see it, please.

The Witness: I think I have a copy of that, also.

Mr. Wilson: Well, there seem to be some notes on here that are not in the handwriting of the witness. I can't see anything in it, if the Court would care to look at it, that is contrary to anything else that has been said here.

Mr. Kramer: No. It isn't. We would like the Court to see it.

Mr. Wilson: I see no point in it. I object to the use of the statement.

(Document handed to the Court.)

The Court: I don't know the purpose of it.

He can be questioned.

Mr. Leonard: You may cross examine.

Mr. Wilson: I just have one or two questions, Mr. Hussey.

Cross examination.

By Mr. Wilson:

[fol. 699] Q. In the last year or so, maybe a little longer back, did you run a schedule in the Item for a while?

A. I did, yes, sir.

Q. And I believe you did drop that schedule?

A. I did.

Q. Why did you drop it?

A. Well, because I couldn't afford to spend my money in three papers, because it would exceed my monthly budget. I operate on a monthly budget.

In some months, I may spend, maybe, $500 or $600; and, in some months, I might spend $800 or maybe $900. It all depends on how conditions are.

If I feel that business is kinda slow, quite naturally, I would spend more money on advertising and try to bring more money into my business.

Q. And the schedule you normally run is in the Times-Picayune and States to get your business in?

A. That is right, sir.

Q. And you didn't feel it necessary to use the Item to get that business in?

A. How is that, sir?

Q. I say: You didn't feel it necessary to use the Item to get that business? You could get it through the Times-Picayune and States?

A. Well, just like I said: If I went in the Item, it would exceed my budget; so, therefore, when my contract expired, [fol. 700] I didn't renew it with the Item any more. I let my contract lull. I continued doing business with the Picayune and the States.

Q. And you had been doing business with the Picayune, and the States, I believe, for I don't know how many years?

A. Since about—I would say twenty-five or twenty-eight years.

Q. And you would run your schedules in the Times-Picayune and the States?

A. I have, yes, sir.

Mr. Wilson: That is all. Wait just a moment.

By Mr. Wilson:

Q. Mr. Hussey, three or four weeks ago or maybe longer, Mr. Phelps and I came out to see you and we talked with you there in your office, with Mr. Eagan there.

A. You did, yes.

Q. And I believe you told me at that time that when you dropped the Item you dropped the Item because it didn't produce the results.

Wasn't that it?

A. That is right.

Mr. Wilson: That is all.

A. (Continuing.) I will say this much: I also called Mr. Stevens the next day to find out what you wanted; because, after you left, I didn't quite understand what you wanted, because neither one of you ever said anything to me, other than that, so I called Stevens the next day.

I said, "Mr. Stevens, what does this man want with me"?

I tried to get him that afternoon and he was out, which [fol. 701] his secretary told me. The following day, I did get him on the phone.

I said, "What do those two gentlemen want with me? I don't know, because neither one of them said anything."

And I said, "Steve, what did they say?"

He said, "I thought you were very nice and very friendly and very congenial and social"; and I said, "Thank you."

Mr. Wilson: Thank you very much.

[fol. 702] By Mr. Leonard:

Q. Mr. Hussey, if you were not required to take the daily States in combination with the morning Times-Picayune, it is true that you would place some of your advertising in the Item, is it not?

A. Mr. Leonard, that is pretty hard for me to answer, because probably I would, and I want you gentlemen to

understand I have no grievance at any of the papers. I am not obligated to any of them; none of them are obligated to me. But it all depends upon conditions. You may have bad conditions and you may go in all papers; then you might stay out of maybe—if you didn't have a combination you may stay out of all the afternoon and stay in the Picayune by itself. It all depends upon the conditions that arise. That is something pretty hard to answer, but I mean, if I had the privilege of advertising in three papers probably I would advertise in three papers; and I will say this much: If conditions right now would justify me to advertise in three papers probably I would take all three papers, which I have done up to approximately a year ago, or maybe—maybe a year ago; I don't know: maybe not that long; maybe nine months ago.

Mr. Leonard: We have no further questions, Your Honor.

The Court: Now, with respect to the statement: I think it may be confusing and misleading if the record stands as it is. I understood the witness to say he did not sign the statement. You did sign the statement after some changes had been made in it?

A. Yes, sir; I did.

[fol. 703] The Court: Those changes had to do with this question of budgeting the expenditures. Is that correct?

A. Yes, sir.

The Court; I suggest you question him concerning the statement so that the record will be straightened out.

By Mr. Leonard:

Q. (Handing document to witness) This is the statement which you signed, isn't it, Mr. Hussey?

A. It is; yes, sir.

Q. And the additional language written on there in longhand was put there by you?

A. It was; yes, sir.

Q. Those are you own words?

A. My own words.

Mr. Wilson: Just a moment; does he mean everything on there?

By Mr. Leonard:

Q. You don't mean the notes at the bottom?

A. That in pencil, I don't know anything about that. I have the same copy here that you have there.

Mr. Leonard: We will offer in evidence, Your Honor, the statement of the witness.

Mr. Wilson: Well, I have no objection to the statement itself; it doesn't add anything. It has some notes on it.

Mr. Kramer: We have a copy without the notes.

[fol. 704] Mr. Wilson: I see no reason to put it in evidence. I object to it.

The Court: The objection is sustained.

(The document offered was rejected.)

Mr. Leonard: That is all, Mr. Hussey.

Mr. Kramer: May I make a brief explanation off the record of why this statement occurred?

(Remarks off the record.)

(Witness excused.)

VICTOR FLOYD KIRSCHMAN, a witness called by and on behalf of the Government, being first sworn, was examined and testified as follows:

Direct examination.

By Mr. Leonard:

Q. Will you state your name for the record please, sir?

A. Victor Floyd Kirschman.

Q. What is your home address?

A. 3619 Joliet.

Q. New Orleans?

A. New Orleans.

Q. What is your occupation?

A. I am in the retail furniture business.

Q. Where are your stores located, sir?

A. Well, the new store is at 3060 Dauphine Street, and [fol. 705] then there is a secondhand store at 3014 Dauphine.

Q. Do you use classified advertising for your second-hand store?

A. Yes, sir; we do.

Q. And may I ask, please, what newspapers in the City of New Orleans you are using at the present time?

A. The Picayune and the States: the Times-Picayune and the States.

Q. Is it true, Mr. Kirschman, that you are required to run your classified advertising in the morning Times-Picayune and the evening States as a unit?

A. That is my understanding.

Mr. Wilson: If the Court please, I don't like to delay this thing, but I object to these leading and suggestive questions. I am willing to permit the one to stand but I trust that counsel will take it the other way, please.

By Mr. Leonard:

Q. Does the unit plan for the sale of classified advertising have any effect upon your choice of media in New Orleans newspapers?

A. Well, it might have, depending on how the rate was broken down. It is possible that we would only use the morning paper rather than the two papers.

Q. And do you have an opinion as to which paper in New Orleans you would use as your first choice of media?

A. Yes, I do: the Times-Picayune, in my opinion, and the [fol. 706] opinion of the people that are active in our annex also feel that the Picayune is the one that produces the best and most sales.

Q. Do you have a second choice newspaper.

A. Well, the Item, of course, has carried a lot of furniture lineage in New Orleans, and I would imagine that if rates were comparable to display rates I would imagine that the Item paper would be a second choice.

Q. Mr. Kirschman, are you able to test the advertising value or pulling power of the afternoon States?

A. Well, it is very difficult to test any advertising too accurately in our business, particularly in the secondhand business. You are limited to the types and number of items that you can use. Our items that produce best for us.

tend to remain rather constant and we use them in nearly all of our advertising. We could possibly take an item and spot check it, but it would be also a great deal of a matter of opinion.

Mr. Leonard: You may cross examine.

Mr. Phelps: We have no cross examination.

(Witness excused.)

Mr. Kramer: Mr. Houghton, take the stand please.

Mr. Phelps: You have another classified witness here.

Mr. Kramer: Mr. Houghton, will you take the stand, please.

[fol. 707] HARRISON F. HOUGHTON, a witness called by and on behalf of the Government, being first sworn, was examined and testified as follows:

Mr. Phelps: If the Court please, do we understand that the Government has finished with the classified advertising witnesses?

Mr. Kramer: We don't know, Your Honor. We will let you know when we do know.

The Court: I suggest we take a recess, gentlemen, of ten minutes.

(Brief recess.)

Mr. Kramer: Before carrying on with Mr. Houghton, I thought I would fulfill my promise made on the record to offer the remaining general rate cards of the Times-Picayune Publishing Company in existence from 1940 up to February 1, 1950, inclusive, that have not yet been offered by the Government. Consequently, I offer as Government Exhibit 104, general rate card, Times-Picayune Publishing Company, issued February 1, 1948, in effect May 1, 1948, amended July 26, 1948.

The Court: It is admitted.

(The document marked "G-104" for identification, was received in evidence.)

Mr. Kramer: As Government Exhibit 105, I offer rate card of the Times-Picayune Publishing Company, general

rate card that is, issued December 15, 1948, revised June 1, 1949, in effect, July 1, 1949.

The Court: It is admitted.

[fol. 708] (The document marked "G-105" for identification, was received in evidence.)

Direct examination.

By Mr. Kramer:

Q. Will you please state your name.
A. Harrison F. Houghton.
Q. Will you spell it, please?
A. H-a-r-r-i-s-o-n F. H-o-u-g-h-t-o-n.
Q. Where do you live, Mr. Houghton?
A. Washington, D. C.
Q. What is your home address?
A. 4101 Oglethorpe Street, Hyattsville, Maryland.
Q. By whom are you presently employed?
A. The Anti-Trust Division of the Department of Justice.
Q. What is your occupation?
A. Economist.
Q. When were you born?
A. December 24, 1911.
Q. Where were you born?
A. Valley Junction, Iowa.
Q. Where did you receive your elementary and high school education?
A. In Des Moines.
Q. And that is in Iowa?
A. Yes, sir.

[fol. 709] Q. When did you graduate from high school?
A. In 1930, January.
Q. Did you go to college?
A. Yes, sir.
Q. Where did you receive your A.B. Degree, or what degree did you receive from college?
A. Bachelor of Commercial Science.
Q. Where did you receive that degree?
A. Drake University.
Q. Where is that university?
A. Des Moines.

Q. When did you receive that degree?

A. June, 1933.

Q. What courses were your major studies during your undergraduate work?

A. I had an accounting major and a second major in economics.

Q. What courses did you take in accounting during your undergraduate studies at Drake University?

A. I took a commerce course in accounting, that is all of the courses offered at the university, including principles of accounting, advanced theory of accounting, auditing, C.A.P. problems, income tax accounting—I think that is the list.

Q. And what courses did you take in economics during your undergraduate training at Drake?

A. Economic history, principles of economics, interna-
[fol. 710] tional trade, public finance and taxation, corporation finance, investment problems, commercial law and several others.

Q. Did you take any courses while you were an undergraduate at Drake in statistics?

A. Yes, sir, I took a course in the principles of statistics and mathematics of statistics.

Q. Did you have any graduate education?

A. Yes, sir.

Q. Describe that chronologically, your graduate studies.

A. From 1933 until 1936, I was in the School of Business at Columbia University, pursuing graduate work with courses in money and banking, economic theory, business cycles and a number of other similar subjects.

Q. Now, what was the period of your study at Columbia?

A. 1933 to 1936.

Q. What graduate work, if any, did you take following 1936?

A. I took additional graduate work at the New School for Social Research in New York City, other courses at the Graduate School of the Department of Agriculture in Washington, D. C., and at the American University in Washington, D. C.

Q. To the best of your recollection, state the nature and the titles of the three courses you took.

A. At the New School for Social Research, I have a course in the stock market, another course in money and banking, another course in economic theory. At the Graduate School of the Department of Agriculture, I [fol. 711] had a course in Post-War Economic Problems. At the American University, I had courses in economic theory and political theory.

Q. Will you tell us chronologically the name of each of your employers following your graduation or following your attendance at Columbia University, excluding from the list any that you may have had that were not professional? In other words, I am not interested in your summer part time jobs.

A. From 1936 to 1940 I was employed as Economist with the National Industrial Conference Board, 247 Park Avenue, New York City.

Q. Is that a government institution?

A. No, sir.

Q. What is it, private?

A. No, sir, it is a research institution for business organizations.

The Court: What is the name of it?

The Witness: The National Industrial Conference Board.

By Mr. Kramer:

Q. What was the nature of your work while with the Board?

A. I was Economist in the business research division, working on monthly and weekly reports on business and economic conditions and preparing special analyses of industries.

Q. Would you list, if you can recall them, a few of the analyses that you did while with the National Industrial Conference Board?

A. Well, I published the monthly survey of current busi- [fol. 712] ness, the quarterly reports on the iron and steel industry, railroads, and several other industries. I prepared some studies of comparative economic conditions in this country and in foreign countries.

Q. Were those studies anonymous or was your name on them?

A. For the most part, they were anonymous, although my by-line was carried on a few.

Q. What was your next position after you left the Conference Board?

A. I was Economist for the Bureau of Labor Statistics of the Department of Labor in Washington, D. C.

Q. What did you do for the Bureau of Labor Statistics?

A. I was Economic Analyst for the Employment Statistics Division of the Bureau.

Q. What was your next position?

A. I transferred to the War Production Board in May, 1942.

Q. And how long were you there?

A. I was with the War Production Board from 1942 until 1944.

Q. In what capacity were you employed by the War Production Board?

A. I was Economist for the War Production Board in three different divisions.

Q. Name them, please.

A. Pardon me, that was two divisions, I believe. The War Progress Division—no, there were three: the Reports Division and the Military Requirements Division.

[fol. 713] Q. Did you have anything whatever to do with the allocation of newsprint while you were with the War Production Board?

A. No, sir.

Q. Were the reports, if any, that you published or wrote or prepared filed with the War Production Board made public or were they confidential?

A. They were confidential.

Q. After leaving the War Production Board, what was your next position?

A. I was Economist with the Smaller War Plants Corporation.

Q. That was a Government Corporation, wasn't it?

A. Yes, sir.

Q. Did you write any reports in connection with your official duties for the Smaller War Plants Corporation?

A. Yes, sir. I participated in the monthly report of the Smaller War Plants Corporation, submitted at Congress.

I also collaborated in the production of a monograph called "Economic Concentration in World War II".

Q. Where did you go from the Smaller War Plants Corporation?

A. The Smaller War Plants Corporation was absorbed by the Commerce Department in 1946, and I was also absorbed.

Q. You then went from the Commerce Department—strike that. When was the Smaller War Plants Corporation merged into the Department of Commerce?

A. In 1946.

[fol. 714] Q. And how long were you with the Department of Commerce?

A. Until 1947. I think the month was April.

Q. What was your work while you were with the Department of Commerce?

A. Studies involving the structure of various industries, the availability of credit and similar subjects.

Q. Where did you go from the Department of Commerce?

A. To the Federal Trade Commission.

Q. How long were you with the Federal Trade Commission?

A. From 1947 until February—until March of this year.

Q. During 1951, while you were with the Federal Trade Commission, were you working for the Commission all that time, or for some other agency?

A. Since February, and up until I transferred to the Anti Trust Division, I was on loan with the Anti-Trust Division.

Q. Describe your work with the Federal Trade Commission from 1947 when you came there until February of 1951.

A. My work was primarily concerned with the study of merger activities, the structure of industries, and possible injuries of competition and similar problems connected with the enforcement of the Federal Trade Commission Acts.

Q. Have you ever prepared any papers or addressed any of the learned economic societies?

A. Well, I have contributed to the Journal of the Ameri-

can Statistical Society, the Review of Economics and Sta-
[fol. 715] tistics, and I prepared an address which was de-
livered before the American Economic Association.

Q. What was the title of that address?

A. "The Growth of Big Business."

Q. Mr. Houghton, I hand you Government Exhibit for identification 106-A, and Government Exhibit 106-B, and I ask you to look at them.

(Witness examined document.)

Q. Will you look at "G-106-B" and tell me what it is, if you can?

A. That is a data sheet or a chart entitled "Classified Advertising Lineage Carried by the Times-Picayune Morning, States Evening, and Item Evening, 1933 to 1950."

Q. Now, look at "G-106-A" and tell us what that is, if you know.

A. This is a chart showing the classified advertising lines carried by the Times-Picayune morning, States evening, and Item evening.

Q. I indicate with my ruler a large chart, and I will ask you to tell me if if isn't identical with "G-106-B" except that it is enlarged?

A. Yes, sir.

Q. Did you prepare, or was it prepared under your supervision, "G-106-B", and "G-106-A"?

A. Yes, sir.

Q. Now, were you requested to make this study of classi-
[fol. 716] fied lineage carried by New Orleans newspapers?

A. Yes.

Q. And what period of time that this study that you made cover?

A. The period 1933 through 1950.

Q. Now, tell us every sort of material that you used in making this study.

A. The data were all secured from Media Records, Inc.

Q. Now, tell me what method you followed, what charting method you followed in preparing Government Exhibit 106-A.

A. The annual totals of advertising lineage were plotted in the spaces running horizontally across the chart, the

scales for lineage being as shown in the left-hand portion in differences of one million, two million, three million, four million, and five million. The scale on the horizontal axis is the time scale.

Q. In terms of years?

A. Yes.

Q. And commencing in what year and ending in what year?

A. Commencing in 1933 and ending in 1950.

Q. Now, I notice on Government Exhibit 106-A a heavy black line that runs from the left hand side of the chart at the bottom to the right hand side of the chart at the top. Will you tell us what that line represents?

A. That represents the trend in the annual classified advertising lineage carried by the States, evening.

[fol. 317] Q. Now you speak of the States, evening, do I understand you have excluded from this chart all lineage respecting Sunday newspapers and that it is confined only to daily newspapers?

A. That is correct.

Q. Now, what does the line on this chart that has been made by a series of circles connected by a black line represent?

A. That represents the classified advertising lineage carried by the Times-Picayune morning annually from 1933 through 1950.

Q. And what does the line represented by black and white bars represent?

A. That represents the classified advertising lineage carried by the Item evening for the same period.

Q. I notice on Government Exhibit 106-A for identification, there is superimposed on part of the line representing the Item another line represented, apparently, by a series of dashes. What does that line represent?

A. That line represents the classified advertising lineage carried by the morning Tribune.

Q. From what period is the Tribune shown on this chart?

A. 1933 through 1940.

Q. I notice that from 1933, or rather from 1936 until some time until about 1945, the line representing the Times-Picayune and the line representing the States are

identical. That is to say, one seems superimposed upon the other. Is that right?

A. Yes, sir.

[fol. 718] Q. And I notice that after 1945, the line representing the Times-Picayune is slightly below that of the New Orleans States.

A. That is correct.

Q. Are you able to state the reason for that variation?

A. It is my understanding that the difference is accountable from the fact that over the river, classified advertising is not sold in connection with the unit rate of the Times-Picayune and States.

Q. Now, in 1934, how much more daily classified advertising lineage was carried by the Times-Picayune than the States, as shown on the chart, Government 106-A?

A. The lineage for the Times-Picayune was approximately doubled that of the States.

Q. In 1934. And the amount of classified lineage carried by the Times-Picayune as compared with that carried by the States in 1950 bore what proportion, approximately?

A. In 1950 the classified lineage of the States was very slightly lower—or very slightly higher than that of the Times-Picayune.

Q. In 1935, above the line representing the States, I notice an asterisk here, do you see it?

A. Yes, sir.

Q. What is that asterisk there for?

A. As the footnote below the Times scale on the chart indicates, that was when the combination rate became effective for classified advertising.

Q. The combination rate became effective?

[fol. 719] A. Yes.

Q. Now, I notice two stars—two asterisks—in 1941 above the Tribune-Item line. What are those asterisks for?

A. That is to indicate, as is indicated in the footnote, that the morning Tribune was discontinued in January of 1941.

Q. Now, in 1935, what was the approximate relative position of each of the four daily papers shown on this chart in terms of total classified advertising lineage carried?

A. The lines are very close together.

Q. Is it correct to say that they carried approximately the same amount, that the difference between the Times-Picayune at the top and the Tribune-Item at the bottom was less than four hundred thousand lines? You might look at your table there—106-B.

A. Well, the exact figures were 1,490,316 in the year 1935 for the Times-Picayune morning; the States evening was 1,344,849; the Item evening was 1,180,850; and the Tribune morning, 1,169,733.

Q. Now, calling your attention to the year 1950, what was the relative position of the Times-Picayune and States daily on the one hand and the Item on the other in terms of total classified advertising lineage carried?

A. The classified lineage in the Times-Picayune and States was approximately four and one-half million, whereas the lineage carried by the Item was slightly more than two million.

Q. Is it correct that the proportion is about double in the Times-Picayune and States as compared with that in the Item?

[fol. 729] A. Yes, sir.

Mr. Kramer: I offer Government Exhibits 106-A and 106-B in evidence.

The Court: They will be admitted.

(The documents marked "G-106-A" and "G-106-B" for identification, were received in evidence.)

By Mr. Kramer:

Q. I hand you Government Exhibits 107-B and 107-A for identification, Mr. Houghton, and I ask you to study those exhibits for a moment.

A. (Witness examined document.)

Q. Now, Mr. Houghton, will you tell us if you can what Government Exhibit 107-B for identification is?

A. That is the tabulation of data for the chart, entitled "General Display Advertising Lineage Carried by the Times-Picayune Morning, States Evening and Item Evening, 1946 to 1950."

Q. Now tell me what Government Exhibit 107-A for identification is?

A. That is a chart showing the general display advertising lineage carried by the Times-Picayune morning, States evening, and Item evening for the period 1946 through 1950.

Q. Were these charts prepared under your supervision?

A. Yes, sir.

Q. And was the tabulated material in Government 107-B prepared under your supervision.

[fol. 721] Q. What was the source of the material used in "G-107-B", please?

A. Media Records.

Q. Only?

A. That is right.

Q. Now, I show you a large chart which is on this easel here, and I ask you to tell me if it is identical with Government Exhibit 107-A except for the fact that it is an enlargement thereof?

A. Yes, sir.

Q. I notice the words on this chart, Government Exhibit 107-A, "General Display Advertising Lineage", is that a category used by Media Records?

A. Yes, sir.

Q. Will you explain to the Court the difference between lines on this chart on the left hand side and on the right hand side?

A. The lines on the left hand portion of the chart represent the annual figures reduced to a monthly average basis, whereas those on the right hand portion refer to the monthly totals for the year 1949 and '50. The levels are thus comparable although there are annual averages on the left portion and monthly averages on the right.

Q. What period of time does the chart, the left hand portion of the chart, represent?

A. 1946 through 1950.

Q. And what period of time does that on the right hand side represent?

[fol. 722] A. 1949 and 1950.

Q. Now, for 1949 and 1950, then, the left hand side is comparable to the right, is that it?

A. That is correct.

Q. Except that the right hand side shows a trend by

months and the left hand side shows the same trend by years?

A. Correct.

Q. Do I understand that you did not make monthly studies for any year prior to 1949?

A. That is correct.

Q. Now, on this chart, Government Exhibit 107-A for identification, I note that the top line consists of a series of connected circles. What does that represent?

A. That represents the general display advertising lineage carried by the Times-Picayune morning.

Q. And below that line I notice a solid black line. What does that line represent?

A. That represents the general display advertising lineage carried by the States evening.

Q. And I notice a black and white line below that. What does that represent?

A. That represents the general display advertising lineage carried by the Item evening.

Q. I notice that on this chart, Government 107-A, unlike the chart, Government 106-A, there are only three newspapers represented. Can you tell the Court the reason for not having the Tribune on that chart? [fol. 723]

A. As previously pointed out, the morning Tribune was discontinued in 1941.

Q. As shown by Government Exhibit 107-A for identification, will you tell the Court what the relative position of the States evening and the Item evening is for 1949?

A. They were very close together, with some differences in certain months.

Q. That is to say that the lineage carried by the Item and the States throughout 1949 varied only slightly from month to month—strike that question. The amount of advertising lineage carried by the States as compared with that carried by the Item during the months in 1949 was on the whole approximately the same, is that right?

A. That is correct.

Q. Now, in 1950, was the amount of lineage carried by the Item, as shown by Government's Exhibit 107-A, still approximately the same as that carried by the States, or was there a variance, a sharp variance?

A. The lineage was very similar during the first month of 1950, but thereafter there was a wide variance between the two.

Q. Well, which had more?

A. The States.

Q. More than the Item?

A. Yes, sir.

[fol. 724] Q. Now, have you made a study—you obviously have made a study, have you not, of the general display advertising lineage for New Orleans newspapers, is that correct?

A. Yes, sir.

Q. Is it your view that general display advertising and national advertising are used interchangeably or are there differences as those two words are used.

Mr. Wilson: Well, I object on the grounds the witness has not been qualified to express an opinion on that.

[fol. 725] By Mr. Kramer:

Q. Do you know the difference between the term "General Display Advertising Lineage" and "National Advertising Lineage?" Now, that is a "Yes" or "No" question.

A. Yes.

Q. Will you state to the Court what is it, please?

A. There are some categories of general display advertising which individual newspapers may identify as local, whereas the Media Records classify it as general display, and the general connotation in the industry is that the two terms are synonymous. The number of such items are not great in the total picture.

Q. But as I understand you, when you say "General Display Advertising Lineage" in Government's Exhibit 107-A you are referring to whatever Media Records referred to?

A. That is correct.

Mr. Kramer: I offer Government's Exhibit 107-A and B in evidence, if the Court please.

The Court: They will be admitted.

(The documents marked "G-107-A" and "G-107-B" for identification were received in evidence.)

Q. Mr. Houghton, I hand you Government's Exhibits 108-A and 108-B for identification, and ask you to look them over.

A. (Examines documents.)

Q. Have you examined Government's Exhibits for identification 108-A and 108-B, Mr. Houghton?

[fol. 726] A. Yes, sir.

Q. Will you tell me what 108-B is, if you know.

A. That is a tabulation of data for a chart entitled, "Percentage of Total General Display Advertising Lineage in Evening New Orleans Newspapers."

Q. Did you prepare, or was this material prepared under your supervision?

A. Yes, sir.

Q. And what is 108-A, please?

A. That is a chart prepared from the data on Government 108-B showing the percentage of total general display advertising lineage in evening New Orleans newspapers carried by the States and Item, 1946 through 1950.

Q. Now, were there any other evening newspapers in New Orleans in 1946 through 1950, published in New Orleans?

A. No, sir.

Q. Is this chart which I have placed on this easel an exact copy of Government's Exhibit 108-A except for the fact it has been enlarged?

A. Yes, sir.

Q. Now, again in this chart, what was the source of your data?

A. Media Records.

Q. And only Media Records?

A. Yes, sir.

Q. Are these the same, on this chart, (that is 108-A) an-
[fol. 727] nual and monthly figures for General Display Advertising Lineage shown in the preceding chart, Government's Exhibit 107-A?

A. Yes, except that the data for this chart has been reduced to a percentage basis.

Q. To a percentage basis. And, of course, this chart does not show any data respecting the Times-Picayune, does it?

A. Correct.

Q. Now, you say 108-A has been reduced to a percentage basis. Can you make that a little clearer to those of us who aren't statisticians?

A. The general display advertising lineage of the States and that of the Item have been added together to form a total, and then each has been computed as a percentage of that total, the universe figure being the total of general display advertising lineage carried in evening New Orleans newspapers.

Q. Well now, is it correct to say, to put it my way, that Government Exhibit 108-A charts the proportion of all general display evening advertising lineage in New Orleans carried by each of the two evening newspapers?

A. That is correct.

Q. All right. Now, will you again explain the difference between the lines on the left and those on the right in Chart 108-A?

A. The lines on the left represent the annual monthly averages reduced to a percentage basis; whereas those on the right portion of the chart represent the monthly totals reduced to a percentage basis.

[fol. 728] Q. Are the years the same from left to right?

A. The years for the left portion are from 1946 through 1950, whereas those on the right portion refer to the years 1949 and 1950.

Q. Now, what does the heavy black line represent on the Chart 108-A?

A. That represents the proportion of the total general display advertising lineage in New Orleans evening newspapers carried by the States.

Q. And what does the other line, the black and white bar line represent?

A. That represents the proportion of the total carried by the Item.

Q. Is it correct to say that in 1949 the proportion of the total general display advertising lineage carried in the evening by the States and by the Item never varied by more than ten percent?

A. That is correct: in terms of percentage points. The variations were not more than ten percentage points.

Q. What was the maximum spread between them in 1950 and in what month did that maximum spread occur?

A. The maximum spread, between the two in 1950 occurred in the month of October, and the spread was from 65 per cent of the total on the part of the States to 35 per cent of the total on the part of the Item.

Q. Now, what was the spread in the month of December, 1950, (to save a question on cross).

A. In December, the percentage for the States was 57 per [fol. 729] cent as compared with 43 per cent for the Item.

Q. Now, this study, that is that's represented by 108-A, also excludes, as did the others, does it not, Sunday lineage?

A. Yes, sir.

Q. Did you make any comparable studies to that in 108-A for any part of the year 1951?

A. No, sir.

Q. Would you state to the Court the reasons why you did not make that study?

A. There are two reasons, the first being that when I prepared the study the 1951 figures were not yet available to me. The second reason was that were they available there would be the problem of how to make the six-day operation of the Item in 1950 comparable with the five-day operation of the daily field of the Item in 1950——

Q. In 1951 you mean?

A. '51; pardon me.

Mr. Kramer: I offer Government's Exhibit 108-A and B in evidence.

The Court: You say "five-day Item"? the Item operations; five-day week?

A. Five-day week in 1950, and in 1951; it was on six. I beg your pardon: six days in 1951, and five days—Five days and Sunday; so that there were five dailies in 1951 as compared to six dailies in 1950.

The Court: I see.

Mr. Phelps: If the Court please, I am going to object [fol. 730] to Exhibits 108-A and 108-B. Possibly we should have objected to the other ones on the grounds that they did not show the Sunday figures, but we figured that went to the weight of the particular exhibits.

On these two exhibits our objection is two-fold: in the first place they are wholly irrelevant, since there is nothing

in the record to demonstrate that the figures of the States and the Item have any interdependence or interrelationship to each other; so that to take the two of them as a whole and treat them as a unit, in our opinion, is wholly irrelevant, a wholly fallacious theory. Our second objection is that the chart itself is distorted in that it only shows 40 per cent out of a hundred per cent, and would tend to create the impression that the spread is substantially greater than the spread in fact is.

Mr. Kramer: If the Court please, I would presume that the objections counsel have made go to the weight of the chart. At the proper time, after the evidence is over, we will both argue what they prove, but I suppose, so long as they represent what they say they represent, they are admissible.

The Court: I should think so. I overrule the objection.

(The charts marked "G-108-A" and "G-108-B" for identification were received in evidence.)

The Court: Let me make this observation, however, with respect to 107-A and B. 107-A shows the source of the information as Media Records, and I think the witness has so testified. At the bottom of Exhibit 107-B appears the notation: "Source: Media Records, Annual, 1946-49, Blue books, 1950," et cetera. Are all of those sources?

[fol. 731] By Mr. Kramer:

Q. Would you answer His Honor's question, please?

A. They are all different reports of Media Records. Some carry them annually and others monthly.

Q. Mr. Houghton, I hand you Government's Exhibit 109-A and B for identification, and I will ask you to tell me what Government's Exhibit 109-B is, please.

A. That is the tabulation of data prepared for the chart entitled "Distribution of Total Number of General Display Advertising Accounts, According to Newspapers Used in New Orleans in 1949—Daily (Excluding Sunday).——

Q. Did you prepare the data or was it prepared under your supervision, tabulated on "G-109-B?"

A. Yes.

Q. And what is "G-109-A?"

A. That is a chart drawn on a percentage basis from the data shown in Government 109-B.

Q. Now, is the Chart now on the easel an exact copy of "G-109-A" except that it is enlarged?

A. Yes, sir.

Q. And 109-A was also prepared, under your supervision, was it?

A. Yes, sir.

Q. Now, this study also excludes Sunday, does it not?

A. Yes, sir.

[fol. 732] Q. And it shows only the number of accounts, does it not?

A. Yes, sir.

Q. It has nothing to do with lineage whatever. Is that right?

A. Correct.

Q. And it also is based exclusively on Media Records?

A. Yes, sir.

Q. Now, will you state to the Court what is represented by each of these five columns in "G-109-A", starting with the lefthand side column and moving over to the right as you face the exhibit?

A. The first column, or bar, represents the percentage of the total number of general display advertising accounts carried by one morning and one evening paper in New Orleans in 1949. The division in the bar represents the separation of those percentages as between the Times-Picayune morning and the Item on the one hand, and the Times-Picayune and States on the other.

Q. Proceed from left to right.

A. The second column represents the number of accounts that were carried by one morning paper, and the Times-Picayune only was indicated as the only morning paper in New Orleans.

The third bar represents the number of accounts run in one evening paper. The bar is divided as between the States only and the Item only.

The fourth bar represents the number of accounts running in two evening papers, and the two evening papers were the Item and States.

[fol. 733] The fifth bar represents the proportion of the

total number of general display advertising accounts run in all three daily New Orleans newspapers.

Q. Have you prepared, or are you now preparing a similar study for 1950?

A. Yes, sir.

Q. Is that study yet prepared?

A. It is in partial completion.

Q. Do you think you will have it completed by Monday?

A. Yes, sir.

Mr. Kramer: May I suggest we reserve the number, "G-110-A and B" for that study.

(The numbers "G-110-A" and "G-110-B" were reserved.)

Mr. Kramer: I wondered if the Court was interested in having an explanation from counsel as to the reason for the preparation of this chart? If the Court feels it is relevant without such an explanation I shall be silent.

The Court: I will be glad to hear an explanation.

Mr. Kramer: Government's Exhibit 109-A was prepared by Mr. Houghton at my request to show the number of advertisers in New Orleans in 1949 who selected only a morning, one morning and one evening paper. Now that is the number of advertisers: not the number of accounts. When the appropriate time comes——

The Court: Number of accounts?

[fol. 734] Mr. Kramer: It is the number of accounts; not the number of lines. That is right, Your Honor.

When the appropriate time comes the Government will contend that it is this category (indicating 1st bar) of advertisers who are excluded from an opportunity to use the Item. That is to say, those advertisers who desire only "One Morning and One Evening Paper," who cannot as a matter of logic and fact deal with the Item. That will leave open the question of whether they wanted to deal with the Item or not. One thing is certain, if they wanted one morning paper and one evening paper they can not deal with the Item.

Mr. Phelps: May I ask when you designated this category whether you designated the 9.7 per cent category?

Mr. Kramer: I was designating the entire column. The

column represents one third of that column, or approximately ten per cent in 1949, chose the Item. Of course, Your Honor, I want to make it absolutely clear this is argument. I am not testifying, and what I say is not testimony.

On that basis, I offer Government's Exhibit 109-A and 109-B.

Mr. Phelps: If the Court please, I don't see where it is relevant at all, unless the Government is prepared to produce the counter part, it seems to me.

Mr. Kramer: 1950, you mean.

Mr. Phelps: For 1950. I think this suit was filed in June of 1950. It seems to me that it is extending the trial pretty far [fol. 735] to permit the Government to complete preparations of exhibits eight days after the trial has started when the suit was filed in June of 1950.

Now, I will abide by whatever Your Honor's discretion of the matter is but I think we are going pretty far.

The Court: I think this is admissible.

(The charts marked "G-109-A" and "G-109-B" for identification were received in evidence.)

The Court: Let me see you gentlemen at the bench at this point, if you will.

Mr. Kramer: May I make one modification? I want to make it clear I am offering the entire chart; not just the first column.

The Court: We understand.

(Bench conference.)

[fol. 736] Mr. Kramer: No further examination of Mr. Houghton at this time, Your Honor.

We shall recall him, with the Court's permission and, I understand, without objection from the defense counsel under Rule 23(h).

Mr. Phelps: Are you going to permit the other exhibits for 1950, Your Honor?

The Court: I anticipate that I shall.

Mr. Phelps: Then, he will be recalled for that purpose, also.

Mr. Kramer: Yes, for a moment on Monday.

You may step down.

(Witness excused.)

The Court: Do you have another witness now?

Mr. Kramer: We are all done. I am sorry it happened. This is the first day it has happened.

The Court: Well, that can't be helped.

We will stand recessed until Monday morning at ten o'clock.

(Whereupon, at 4:30 o'clock p. m., Friday, May 4, 1951, a recess was taken until Monday, May 7, 1951, at 10:00 o'clock, a. m.)

[fol. 737] PROCEEDINGS OF MAY 7, 1951

(The trial was resumed, pursuant to adjournment, on Monday, May 7, 1951, at 10:00 o'clock, a. m.)

COLLOQUY BETWEEN COURT AND COUNSEL

The Court: Proceed, gentlemen.

Mr. Kramer: If the Court please, Monday is transcript correction day, and I am pleased to be able to say to Your Honor we have been able to agree upon almost every correction, so far as I know, except three, which I will now very briefly call to Your Honor's attention. First is on page 147. That will be in Volume II, line 15. I dislike having to cite The Times-Picayune newspaper for the reporting of this case, but since it is a defendant also it shows the line that the transcript does not show, which I clearly heard Your Honor speak, and the line was, "The objection stands." Do you remember, that was the time when I asked for a standing objection to evidence as to the practice of other newspapers outside the City of New Orleans, and I was quite positive—I hope Your Honor is—that you said, "The objection stands," after I asked for it. The record fails to show that line.

The Court: That is line 15.

Mr. Kramer: I think what Your Honor said was, "That is right; the objection stands." The Times-Picayune had the words, "The objection stands," without "That is right" in it. Is that Your Honor's?

The Court: That is my recollection: to make the objection general.

Mr. Wilson: I so understood it. I just thought the Court ought to pass on it.

[fol. 738] Mr. Kramer: Correction on page 478, that is in Volume IV, in which both counsel, with some hesitation, agree that there is made a miscalculation in arithmetic.

The Court: (Examining document handed to him) What lines?

Mr. Kramer: Lines 23 and 24, Your Honor.

There is an arithmetical miscalculation there, if Your Honor please. Does Your Honor agree? Perhaps counsel made it.

Mr. Wilson: I think there were some other figures involved; that's what I thought. That is why I was asking if anyone had those figures, or if there were some figures left out.

Mr. Kramer: The figures at the top of the page, Your Honor, I think reflect what the figures at the bottom of the page should have.

The Court: I think I can straighten that out if I had the document that I was examining.

Mr. Wilson: We will bring that over this afternoon. I think there were some other figures involved.

The Court: I was making a comparison there between the increase in one as compared with the increase in the other. Of course, it is very possible that I can make an arithmetical mistake. The witness said, "That is right," so he agreed with me.

Mr. Kramer: That is the problem we face, Your Honor, because your question shows it could not have been right and, therefore, we don't know whether the Reporter got the wrong figure or not.

[fol. 739] Mr. Wilson: We will get the correct figures on that.

Mr. Kramer: And agree upon it.

The Court: I think if the Reporter will examine his notes it might straighten it out, because I think counsel, in following the calculations at the time, I believe if they were incorrect counsel would have noticed them.

Mr. Kramer: Yes. Our only point was——

The Court: It should be corrected.

Mr. Kramer: ——that one of the figures in there must be wrong. The question is, which one.

The Court: You are right about that.

Mr. Kramer: I now hand to the Official Court Reporter a list of the corrections which it is our understanding both sides have agreed on. Since the defendants have not had a chance to check this against our conversation yesterday, presumably the corrections should not be made until tomorrow.

Mr. Wilson: I assume they are correct.

Mr. Kramer: Thank you.

(Document handed to the Reporter.)

The Reporter: Do you want this list made of record, or how do you suggest these corrections shall be made?

Mr. Kramer: My suggestion as to how the corrections should be made is this: That you, (the Reporter) at an appropriate time, will obtain the Court's copy of the transcript and insert them on that copy, if that is agreeable with the Court.

[fol. 740] The Court: Very well.

Mr. Kramer: By "you" I mean the Court Reporter.

The Government now withdraws its objections to Defendants' Exhibits 5 through 13 inclusive.

Mr. Wilson: I offer the exhibits again.

The Court: They will be admitted.

(The documents marked Defendant's Exhibits 5-13, inclusive, for identification, were received in evidence.)

Mr. Kramer: The record does not show that Government's Exhibits 18 and 102 have been admitted. The Government would like to inquire of the Court as to whether it is Your Honor's recollection that they have been admitted? 18 and 102.

Mr. Wilson: 18 is the rate card, isn't it,——

Mr. Kramer: Right.

The Court: What does the Clerk's record show with respect to that?

The Clerk: Which one is that?

Mr. Kramer: "G-18" and "G-102."

The Court: Let it be admitted, if it is not already. It is the rate card in effect February 15, 1933.

Mr. Kramer: That is 18.

The Clerk: I don't have them.

Mr. Kramer: 102 was a letter.

The Court: It will be admitted.

[fol. 741] (The documents marked Government's Exhibits 18 and 102 for identification were received in evidence.)

Mr. Kramer: We would like to inquire whether defendants have been successful in finding the enclosures referred to in Government's Exhibits 42 and 51, which they have kindly consented to look for.

Mr. Wilson: We were unable to find them.

Mr. Kramer: Do the defendants yet have the copy of the letter from Haskins & Sells that they have agreed to furnish us?

While he is looking for that letter, (counsel for defendants that is, Your Honor) I would like to inquire if Your Honor would regard it as appropriate for the Government to inquire when the interrogatories to Mr. L. K. Nicholson will be ready for submission?

Mr. Phelps: I think the answers to the interrogatories will be submitted to the Court this afternoon at two o'clock.

The Court: Very well.

Mr. Kramer: It would be of great help in examining, possibly, two of the witnesses here today if we were to have those answers at two o'clock.

Mr. Phelps: If the Court please, Mr. Nicholson has answered the interrogatories. They are being typed up. He was to execute them at about ten-thirty. If it will facilitate the Government I will attempt to have the answers to the interrogatories here earlier than two o'clock.

Mr. Kramer: That will be a great help, and we certainly hope you can.

[fol. 742] The Court: As soon as he signs them they should be available.

Mr. Wilson: Here it is (handing document to counsel.)

Mr. Kramer: Mr. Wilson has just handed me, Your Honor, a letter from Haskins & Sells to The Times-Picayune Publishing Company, dated May 18, 1945.

[fol. 743] Mr. Kramer: The Government now recalls to the witness stand for direct examination Mr. Harrison Houghton.

HARRISON F. HOUGHTON, resumed the witness stand and testified further as follows:

Direct examination (Continued.)

By Mr. Kramer:

Q. Mr. Houghton, I hand you Government's Exhibits 110-A and -B for identification and ask you to study them a moment.

(Documents handed to witness.)

(The documents referred to were marked G-110-A and -B for identification.)

The Court: What numbers have you assigned?

Mr. Kramer: 110-A and -B, Your Honor.

By Mr. Kramer:

Q. Will you state whether Government's Exhibits 110-A and -B were prepared under your supervision?

A. Yes, sir.

Q. What was the source of the material from which they were prepared, please?

A. Media Records.

Q. Will you describe briefly to the Court what G-110-B is.

A. This is a tabulation of data for a chart entitled "Distribution of Total Number of General Display Advertising Accounts According to Newspapers Used in New Orleans in 1950, Daily, Excluding Sunday."

Q. And what is G-110-A?

[fol. 744] A. That is a chart drawn from the data included in Government Exhibit 110-B.

Q. Is that chart identical with 110-A, except that it is enlarged?

A. Yes, sir.

Q. Now, was Chart 110-A prepared on the same basis for 1950 as 109-A was prepared for 1949?

A. Yes, sir.

Q. Is there anything on Government's Exhibits 110-A or -B which have to do with advertising lineage?

A. No, sir.

Q. The measurements are entirely confined to number of accounts, whether one account took one line or a million lines? Is that right?

A. Yes, sir.

Q. Mr. Kramer: I ask your indulgence, Your Honor.

The Court: All right.

Mr. Kramer: The Government offers G-110-A and -B in evidence, if the Court please.

The Court: They will be admitted.

(The documents referred to, marked "G-110-A and -B" for identification, were received in evidence.)

The Court: If I understand this chart, 39 percent of the total number of general display advertising accounts used all three newspapers.

[fol. 745] The Witness: That is right, sir.

Mr. Kramer: Number of accounts. That is right.

The Court: Number of accounts.

Mr. Kramer: In 1950.

The Court: In 1950. That is right.

Mr. Kramer: By agreement with counsel and what I consider to be the permission of the Court, we now turn Mr. Houghton over for cross-examination on the lineage and account phase of his testimony and reserving the right to call him on direct examination for accounting testimony.

Mr. Phelps: It is defendants' understanding that the cross-examination of Mr. Houghton is to be split and that I will be permitted to conduct this portion of the examination and Mr. Wilson will be permitted to conduct that portion of the cross-examination directed to the accounting.

The Court: That is satisfactory to the Court.

Mr. Phelps: I would also like to ask permission of the Court to reserve the right to further cross-examination of Mr. Houghton in connection with Chart 109(a) and (b) and Exhibits 110(a) and (b).

The Court: Counsel for defendants might defer any cross-examination of this witness until he has testified a

second time, then both of you gentlemen cross-examine him.

Mr. Phelps: My preference would be to cross-examine at the present time, if the Court please.

The Court: That is all right.

[fol. 746] Mr. Phelps: I think I may be able to complete it.

Cross-examination.

By Mr. Phelps:

Q. Mr. Houghton, as I understand it, you were assigned to the Department of Justice particularly for the purpose of this case, is that correct?

A. Yes, sir.

Q. And when did you assume these duties with the Department of Justice?

A. I was on a loan basis beginning in February. I don't remember the exact date.

The Court: Are you still on a loan basis?

The Witness: No, sir, I am transferred.

Q. But you began work on these charts around the first part of February or the last part of February?

A. Not on these charts, Sir; on the whole operation.

Q. The whole operation. How many men did you have working with you in connection with the preparation of these charts?

A. In connection with the charts alone, you mean?

Q. In connection with Exhibits 106 to 110, (a) and (b).

A. In connection with the charts; they were drawn by draftsmen under my instructions.

Q. And how many draftsmen did you have drafting these charts?

A. One draftsman for each chart—actually there were [fol. 747] different draftsmen on the various charts, not necessarily the same person.

Q. And you supervised the entire operation of these four draftsmen?

A. I presented the rough sketches and they drew the big charts from them.

Q. Did you compile the statistics also?

A. They were compiled under my supervision.

Q. As I understand it, you are testifying in this case as a statistician, is that correct?

A. Yes, as well as an economist.

Q. Well, who gave you the instruction?

Mr. Kramer: I didn't hear the end of your answer, Mr. Houghton, and I must hear.

A. As well as an economist.

Q. So far as your examination on direct examination is concerned, as I understand it, you have testified entirely to statistical information in connection with Charts 106 to 110, is that correct?

A. Yes, sir.

Q. Did you have advice from any newspaper man or newspaper accountant as to the method of preparation of these charts?

A. No, sir.

Q. Who fixed the limits and the ideas within which the charts were to be executed?

A. I did.

[fol. 748] Q. As I understand it, you are not attempting to interpret these charts to the Court, but you have merely made these compilations, is that correct?

A. That is correct.

Q. Now, referring to Government Exhibit 107-A, would you tell us what that chart purports to show?

A. This chart shows the lineage carried by the Times-Picayune morning, the States evening, and the Item evening, during the period 1946 through 1950 on an annual basis, and for the years 1949 and 1950 on a monthly basis.

Q. The purpose of that chart, I take it, is to reflect the effect of the unit rate by comparison between 1949 and 1950, is that correct?

A. The purpose of the chart is to reflect the figures shown in Media Records.

Q. I understand you conceived the idea of these exhibits. I assume the exhibits have some purpose. Now, isn't it correct to say that the purpose is to reflect the comparison in general advertising lineage?

A. In general display advertising lineage as carried by Media Records.

Q. Can you define general advertising lineage?

A. General display advertising lineage as carried by Media Records generally is interpreted as representing national advertising.

Q. But in so far as this case is concerned, what we are [fol. 749] concerned with here—I take it you know, you have been in the Court Room—is that portion of general advertising affected, if any, by the unit combination rate, is that correct?

A. I think that is correct. It is not for me to say as to the interpretation.

Q. Are you familiar with the classification "Automotive Advertising"?

A. Yes, sir.

Q. That includes a substantial amount of general advertising, doesn't it?

A. That is my understanding.

Q. You excluded Automotive Advertising in the compilation of that chart, didn't you?

A. I confined my compilation to the general display advertising lineage as carried by Media Records.

Q. My question is, you excluded general Automotive Advertising; isn't that correct?

A. The category did not include Automotive. Therefore, I could not have excluded it.

Q. You made no effort to compute that portion of general advertising within the automotive classification, did you?

A. I examined it. I made no final study, no, sir.

Q. Don't you know as a fact that the Item had a gain in general automotive advertising in '50 over '49?

A. I made no such study.

[fol. 750] Q. I asked you if you didn't know as a fact, based on Media Records, that that was true?

A. No, sir.

Q. You mean you made no trial and error on automotive?

A. No, sir.

Q. Did you make any trial and error on financial?

A. No, sir.

Q. I put it to you as a fact that the Item had a gain, 1950 over 1949, of more than 16,500 lines in general financial

and automotive advertising, and I ask you if that is a correct statement.

A. I do not know, Sir.

Mr. Kramer: We don't deny it.

Q. In other words, you did not include that portion of automotive and financial advertising affected, if at all, by the unit rate?

A. No, sir.

Q. So that to that extent your chart does not reflect the effect of the unit rate by comparison with the Item between 1950 and 1949?

A. The chart is confined exclusively to the general category.

The Court: As it appears in Media Records?

The Witness: As it appears in Media Records.

By Mr. Phelps:

Q. Do you know if it would be possible for you to distinguish between that portion which was general and that portion which was retail?

A. I think that is a matter which requires the knowledge of the individual account as to how they are carried, and [fol. 751] requires the work of a newspaper accountant.

Q. You did, in fact, have the assistance of a newspaper accountant, didn't you?

A. Not in connection with these charts, no, sir.

Mr. Kramer: I didn't hear that answer.

A. (Continued) Not in connection with these charts.

Q. You mean that you had the assistance of the accountant, but you didn't elect to use it in connection with these charts?

A. I did not have the assistance in any way in connection with these charts.

Q. You had an accountant working with you on this case, did you not?

A. Yes, sir.

Q. But you didn't elect to use the accountant for the purpose of these charts?

A. That is correct.

Q. I put it to you as a fact that the Item had a gain of 1710 lines on advertising affected, if at all, by the unit combination rate, in 1950 over 1949, and ask you whether you know that to be true?

A. No, sir.

Q. In other words, you do not know?

A. You said national advertising, did you not?

Q. I said general advertising affected by the unit rate.

A. No, sir. My study was confined to general display advertising as shown in Media Records.

[fol. 752] Q. So that your chart does not correctly reflect the effect of the unit rate on general advertising except within the limited classification of Media Records?

A. Within the limited coverage of the classification as carried by Media Records. That is all the chart is confined to.

Q. Would you look at Government Exhibit 107-A and tell us approximately the lineage carried during the month of July, 1950, in the Item?

The Court: You could get that easier from "B", couldn't you?

Mr. Phelps: I want to see if the witness can interpret the chart.

A. That is approximately 125,000 lines.

Q. Will you look at the lineage for the month of November and tell us approximately what the chart reflects for the Item?

A. Approximately 165,000 lines.

Q. Does the chart reflect an increase or a decrease in the month of November, 1950, for the Item?

A. As compared to what, Sir?

Q. As compared with the preceding months.

A. November as compared with the preceding months of 1950?

Q. That is correct.

A. Yes. It is an increase.

Q. On your testimony in direct examination, you stated that you did not go into the year 1951 for the reason that [fol. 753] the Item changed its method of operation to five days and a weekend edition, is that correct?

A. Yes, sir.

Q. But you did include the month of December of 1950 during which the same condition was true, didn't you?

A. It was not my understanding that that was the case.

Q. Well, I put it to you as a fact that that was the case during a portion of the month of December, 1950, and ask you if you wouldn't have been more accurate on your own theory if you had omitted the month of December from your calculations?

Mr. Kramer: If the Court please, do I understand the question to be if he assumes something that he doesn't know to be a fact, what the results would be?

Mr. Phelps: I am basing my question on his own statement that it is not a fair method of comparison.

Mr. Kramer: You are asking him as an assumption, is that it?

Mr. Phelps: That is exactly what I am asking him to do.

A. If there were a sufficient number of weeks out of the month where it seriously influenced the trend and if the Saturday lineage were significant enough, or the omission of the Saturday lineage were significant enough, I would omit it.

By Mr. Phelps:

Q. Well, it was significant enough to have you omit 1951, wasn't it?

A. I omitted it because it was not included.

[fol. 754] Q. Well, being a statistician, suppose you omit the month of December from your monthly average calculations, and see what that would make the monthly average for the year 1950 for the Item. I think you can compute it, approximately.

A. I will need pencil and paper, Sir.

Q. Surely. (Handed the witness pencil and paper.)

A. I think it is approximately 155,000 per month.

Q. Slightly over 155,000, isn't it?

A. Yes, sir.

Q. Which is within a few hundred lines of your monthly average for 1949, isn't it? I think you have computed that already.

A. Yes, sir, that is an average monthly.

Q. So that if you had omitted the month of December, you have almost exactly the same average monthly lineage for the Item in 1950 as in 1949, is that correct?

A. Yes, sir.

The Court: Now, let me understand the situation. This figure of 148,630, Item evening, December, 1950, did not take into consideration the weekend paper, you say?

The Witness: No, sir.

Mr. Phelps: In other words, if the Court please, I am asking the witness to omit December of 1950, and take the average for the other eleven months in computing. The witness comes up with a figure which is over 155,000 lines.

The Court: That is approximately the 1949 monthly [fol. 755] average?

Mr. Phelps: That is correct, without any calculations for automotive or financial. It is our position that if those had been included as they should have been, that the 1950 figures would be substantially above the 1949 figures.

Mr. Kramer: I assume that what counsel says is not evidence, Your Honor, is that right?

The Court: I think everybody understands that. Now what is the situation with respect to 1951? Why did he not include it? You made no calculations?

The Witness: The first reason was I didn't have the data on the chart to prepare it.

The Court: That is a pretty good reason. What was the other reason?

The Witness: The other reason was that the comparison was not strictly comparable without knowing in particular the actual lineage carried by the Saturday edition in the corresponding period in the previous portion of the chart. If I had had the breakdown of Media Record lineage by days, I could have eliminated it, but they are carried on a weekly basis only, five day or six day basis.

The Court: You understood the situation with respect to the editions of the Item had been changed?

The Witness: Yes, sir, I did. My understanding was that it was the first of the year. Media Records did not specify that exactly.

[fol. 756] The Court: In other words, they stopped print-

ing a Saturday edition and commenced printing a Sunday edition?

The Witness: That is correct.

By Mr. Phelps:

Q. Now, Mr. Houghton, let's consider some of the factors that are not taken into consideration in this chart; 107(a) and I ask you to correct me if I state factors which you think are considered. First, we have the lineage carried in The American Weekly by the Item on Sunday. That would have an effect, according to the testimony of some of the witnesses, on the weekday lineage. You heard that testimony in Court, did you not?

A. I heard the testimony. I didn't hear it to that effect.

Q. You heard Mr. Klein testify that the Tintex account when he began using The American Weekly, he ceased using the six day Item, did you not?

A. I don't recall his specific testimony, Sir.

Q. On the basis of that being a fact, that factor would not be reflected in your chart, would it?

A. This chart is confined to the daily lineage only.

Q. So that it would not take into consideration advertising lineage carried with The American Weekly in 1950 which might have been carried in the six day Item in 1949. That is correct, isn't it?

A. That is correct. It is confined to the daily figures.

Q. Did you make any effort to study the accounts which the Item carried in 1949 on which they lost lineage in 1950 [fol. 757] with respect to whether those accounts might have been transferred to The American Weekly?

A. No, sir.

Q. With respect to This Week magazine, which is a part of the Times-Picayune Sunday edition, the same situation is true, isn't it, lineage figures are not—the use of lineage in This Week is not reflected on that chart as to any injury or damage it might have done to the six day Item?

A. That is correct.

Q. According to my information, the Item lost at least 92,000 lines of general advertising on some thirty-eight accounts which began using The American Weekly and This

Week magazine. You don't know whether that is the case or not, do you?

A. No, sir.

Q. Assuming that to be a fact, that would not be reflected on your chart, would it?

A. That is correct.

Q. With reference to the Sunday Item which was published in 1950 and which was not published in 1949, your chart would not reflect any advertising lineage lost by the six day Item to the Sunday Item, would it?

A. Would you please repeat that question?

(Question read by reporter.)

A. It may reflect that, yes, sir, if such were the case.

Q. You mean it would show a decrease in 1950 over 1949 [fol. 758] by virtue of the loss of that lineage?

A. If such loss occurred, and it were shifted from the daily, that is the assumption you make, is that correct?

Q. Yes. Would you explain to us how that would be reflected in your chart?

A. Only that the lineage would be less in the weekly—I mean the daily—if it were shifted out of the daily.

[fol. 759] The Court: You would then have to provide another column to show the Sunday?

The Witness: Well, in order to arrive at the effect of that, sir, you would have to go to each individual account and speculate as to whether it was withdrawn from the daily figure, and there is no way of knowing, without going to the advertiser and asking him if he moved it out, specifically, for that purpose.

The Court: I mean, with respect to these figures that you were to set up, now, 1951. Would it not be necessary for you to set up a separate column showing the Sunday Item advertising figure?

The Witness: It depends on your purpose, sir. If you are interested in the daily lineage, only, and that is all this chart is designed to show,——

The Court: If you wanted to make a complete comparison for all the papers, you would have to include the Item, Sunday, if all the——

The Witness: I had no basis for that comparison.

The Court: What effect would it have on this chart if you were to consider the Item, Sunday edition, as simply a Saturday edition labeled Sunday?

The Witness: I haven't tested it in that respect, but they are not comparable.

Mr. Kramer: If the Court please, I assume you mean, if the chart covered 1951.

The Court: 1950. That was a part of December during which they were publishing the Sunday Item, was it not?

[fol. 769] Mr. Kramer: We have so been informed by counsel, but the witness says that wasn't his understanding.

The Court: He said he didn't know. He said he understood it was about the first of the year.

Mr. Kramer: That is right.

The Witness: I understand that they dropped from a six-day, daily, to a five-day, daily. They published the Sunday Item, as I recall, since March of 1950; but, for a while, they kept up the Saturday, daily.

The Court: What did you consider a Sunday paper? The Saturday Evening Post comes out on Thursday, but no one would say it is a Saturday magazine. You would say it is a weekly magazine, but you would hardly say it is a Saturday magazine.

The Witness: You would say it is a weekly magazine?

The Court: Well, I am thinking that with respect to this paper.

You were relying, of course, on the tabulations made by some other authority.

The Witness: That is right.

The Court: All right.

The Witness: However, I think it is very easy to define, in my view, what a Sunday paper is, when it includes comics and other features included in a Sunday paper.

The Court: Regardless of the day it comes out?

The Witness: That is right.

[fol. 761] Mr. Phelps: If the Court please, I move to strike that portion of the witness' testimony for the reason that he isn't qualified to testify on that phase of this lawsuit.

The Court: Well, he simply gave us his opinion.

Mr. Phelps: I prefer not to have his opinion in the record.

The Court: Strike it: It is the Court's fault. I led him into it.

By Mr. Phelps:

Q. You, therefore, made no effort to trace any loss of accounts from the six-day Item in 1950 into the Sunday Item, did you?

A. No, sir.

Q. You wouldn't know if the Item lost any lineage on Holsum Bread to its Sunday edition?

A. No, sir.

Q. Or Coca-Cola?

A. No, sir.

Q. Or Johnson's Wax products?

A. No, sir.

Q. In fact, you wouldn't know about any of these accounts?

A. No, sir.

Q. Would you know if any accounts were transferred from the six-day Item to the colored comic section of the Sunday Item?

A. No, sir.

Q. And your chart would not reflect any such transfers of [fol. 762] business, would it?

Mr. Kramer: Which chart do you mean?

Mr. Phelps: Chart 107-A.

A. It would reflect it, if such occurred, in fact.

By Mr. Phelps:

Q. It would reflect it by a decrease in 1950 over '49?

A. If you could trace the individual accounts and ask the person who put the account in the Sunday paper if he put it there for the purpose of taking it out of the daily. That is the only way I can see it.

Q. But if, in fact, that took place, it would be reflected as a loss on your chart there?

A. Yes, sir.

The Court: I don't follow that, because if it was lost from the weekday—I am trying to get a complete picture—then,

you would have to have the figures for the Sunday, if you wanted to get a complete picture.

If it was transferred from the weekday to the Sunday, it would show a decrease in the weekday and an increase in the Sunday, which would balance off.

The Witness: Well, my only point, sir, is that I have no knowledge of whether a specific account was shifted from the daily to the Sunday.

The Court: I understand that.

If it were reflected, it would be reflected, whether you knew it or not.

[fol. 763] The Witness: If that were the case, yes.

By Mr. Phelps:

Q. So that your chart would not make an accurate comparison between 1949 and 1950 if, in fact, the six-day Item had these other factors to lose lineage to in 1950 that were not present in 1949.

Is that correct?

A. (No response.)

Mr. Kramer: I didn't understand the question.

Mr. Phelps: I will rephrase it.

Mr. Kramer: Don't answer questions you don't understand.

By Mr. Phelps:

Q. In so far as any accounts that were transferred might have been transferred from the six-day Item in 1949 to the Sunday Item in 1950, those would reflect as a loss on Government Exhibit 107-A, wouldn't they?

A. Other things being equal, yes.

Q. Although in point of fact, the business had merely been transferred from one edition to another edition? Isn't that true?

A. Yes, sir.

Q. Your chart doesn't take into account any special sections which newspapers run, such as a Mardi Gras section or an oil section or an automobile section which would have been run in the Item whether or not it published a Sunday paper, does it?

A. The chart is confined to whatever is covered by general display advertising lineage according to Media Records.

Q. In other words, if the Item published an oil section in [fol. 764] its Sunday edition and it had been its practice to have an oil section in preceding years, so that it would have had the oil section, whether or not it was publishing Sunday, your chart would indicate the loss of that oil section to the Sunday edition as a loss in 1950 over 1949.

Isn't that true?

The Court: So far as the weekday is concerned, he makes a disfinction between a net loss and whether or not that loss would be compensated by corresponding gain, don't you?

The Witness: That is right.

By Mr. Phelps:

Q. But your chart would reflect a decrease by virtue of the loss of such a section, wouldn't it?

A. If such a section were included in the category of general advertising display lineage according to Media Records, the Media Records such as you described.

Q. It would reflect a loss in '50 over '49? Isn't that correct?

A. Will you please restate the question.

By Mr. Phelps:

Q. If the Item in 1949 carried a special oil section and in 1950 it carried that oil section in its Sunday paper instead of in its six-day paper, the loss of that section to the Sunday edition would show up as a loss on this chart in the Item's six-day advertising, general lineage? Isn't that true?

A. I don't think I can answer it, unless you qualified it as to whether it was included under general display.

[fol. 765] Q. I said, in the Item's general advertising lineage.

A. Well, this chart is confined to Media Records.

Q. Let's assume that it would be in the classification called "general category" by Media Records. It would reflect a loss on your chart, would it not?

A. If that were the truth, yes, sir.

Q. I notice that your Chart 107-A reflects a decrease for the month of February, 1950 over January, 1950 on the Item. That could easily be attributable to an effort to channel general advertising out of the six-day Item into the March 5th Sunday Item, couldn't it?

A. I don't know.

Q. I will put this to you as a hypothetical question: Assuming that The Item Company had deliberately attempted to channel general advertising out of its six-day edition in February of 1950 into its Sunday edition to commence March 5, 1950, that would tend to explain the decrease for the month of February, 1950 for the Item's general lineage, as shown on Government Exhibit 107-A, wouldn't it?

A. It might. Under those assumptions, I assume it would, if the assumptions are correct.

Q. What you said with respect to a special oil section would apply equally to any other special section which might be carried in the Item's Sunday edition in 1950 which would have been carried or might have been carried in its weekday edition in 1949; wouldn't it?

A. I should believe so.

[fol. 766] The Court: Let me ask this question: When did the Item start publishing a Sunday edition?

Mr. Phelps: March 5, 1950. That is my understanding. Yes. That is correct, Your Honor.

The Court: This change in December, 1950, is the change which he thought occurred about the first of the year.

Mr. Phelps: Counsel doesn't want me to testify on that. The Item began a weekend edition in December of 1950 and dropped its Sunday paper.

The Court: It is in evidence, but I have just forgotten it.

Mr. Kramer: I don't think that is in evidence, is it?

The Court: Well, it will be, won't it?

Mr. Kramer: It certainly will be after this morning. We are going into all that and bring a man over here. We will examine him and the Court can examine him.

The Court: Wasn't it a situation where they had a six-day and a Sunday?

Mr. Kramer: Right.

The Court: And then they dropped the Saturday, but had a Sunday about the first of the year, or sometime in December?

Mr. Kramer: Sometime late in December. That is my understanding.

Mr. Phelps: They had five days and something, if the Court please. We don't concede that it is five days and a Sunday.

By Mr. Phelps:

[fol. 767] Q. Mr. Houghton, do you know if the Item had any rate increases on general advertising in 1950?

A. I made no study of the rate structure.

Q. Your answer is that you do not know?

A. I do not know.

Q. Do you feel qualified to tell the Court whether, if there had been such a rate increase, that might have affected their general advertising lineage?

A. No, sir.

Q. But you didn't consider whether there were any rate increases or not?

A. No, sir.

Q. So that, if there had been a rate increase, your chart would not reflect where that started or what effect it had? Is that correct?

A. No, sir, not in terms of rate increase.

Q. Your answer is that that is correct?

A. That is correct.

Mr. Kramer: I don't hear you, Mr. Houghton.

The Witness: That is correct.

By Mr. Phelps:

Q. In other words, the rate increase is not considered in connection with your chart, if one took place?

A. No, sir.

Q. So that if, in fact, the Item put into effect in 1950 the highest per-line increase in general advertising in its entire [fol. 768] history, you wouldn't have considered that as a factor in drawing up this chart? Is that correct?

A. No, sir.

Q. Your answer is you would not have considered it?

A. No, sir.

Q. And you did not consider it?

A. No, sir.

The Court: You just simply took the figures and converted them into a chart, which is considered a more easily understood method.

The Witness: That is correct.

By Mr. Phelps:

Q. Your chart would not reflect any losses that the Item had in 1950 or '49 to other media of advertising, would it?

A. The chart would reflect anything that affected the lineage figures shown in the chart.

Q. If there had been a loss to television, for instance, that would show in 1950, that would show as a loss by comparison with 1949, wouldn't it?

A. Yes, sir.

Q. And, similarly, for other media of advertising?

A. Yes.

Q. And that would be also true as to campaigns which ran in the Item in 1949 which ran in other cities in 1950, wouldn't it?

A. Yes, sir.

[fol. 769] Q. I notice that on your month-by-month comparison on the righthand side of Chart 107-A, you only take the year 1949 as a basis for comparison.

As a matter of fact, the Item would have looked pretty good in 1950 in comparison with 1947 and 1948, wouldn't it?

Mr. Kramer: Just a minute. I object on the ground that if I understand the question, it is plainly contrary to the chart; therefore, it can't possibly be answered.

Mr. Phelps: The question relates to the righthand side of 107-A.

The Court: The answer would be "no," if the statement he makes were incorrect, and he is asking him: "Is that correct"?

Mr. Kramer: I withdraw the objection. I think I am the one that misunderstands and not the witness or counsel.

Mr. Phelps: Would you repeat the question.

(The Reporter read the last question.)

A. I am sorry. I don't understand the question.

[fol. 770] By Mr. Phelps:

Q. Referring to the left hand side of your Chart 107-A, it is quite apparent that even on your own figures the Item had a much better year in 1950 on general advertising than in either 1947 or '48. Isn't that true?

A. Yes, sir.

Q. I am wondering if you can explain to the Court why you did not use the years 1947 and 1948 on the right-hand side of your chart?

A. I was not requested to make such a chart.

Q. As a statistician you know that it would have been a much fairer comparison, don't you?

A. No, sir.

Q. You think that a two-year comparison would be more accurate than a five-year comparison?

A. The five-year comparison is on the left-hand portion. You don't have to show the monthly figures, necessarily, in order to make a comparison.

Q. How far back did you go in your comparison on classified?

A. 1933.

Q. But you went back only four years on general. Is that correct?

A. That is correct.

Q. Did you, in fact, prepare any studies over a longer period of time which were subsequently rejected?

A. No, sir.

[fol. 771] Mr. Kramer: For what classification, please?

Mr. Phelps: On general advertising.

Q. You don't know what the figures would show for the years 1944, '45 or '46 do you, on general advertising?

A. I looked at the figures. I do know what they show, but I didn't reject any chart.

The Court: Counsel did not ask you if you rejected the

chart. You were making the charts. He asked you if you had prepared any other charts and somebody else rejected them.

A. No, sir.

By Mr. Phelps:

Q. You did not even make any rough drafts of charts on that subject?

A. No, sir.

Q. I notice that on your chart, the Item, on the left-hand side of 107-A, had a loss on six-day general advertising, for the year 1948, while both the States and the Times-Picayune were gaining. Isn't that correct?

A. Yes, sir.

Q. Do you happen to know whether that was also true in 1945?

A. No, sir; I do not recall.

Mr. Kramer: Did you say you didn't recall?

A. I do not recall.

Q. So that if the Item had actually had two decreases in general advertising within the last six years, in years in which both the Times-Picayune and the States were [fol. 772] increasing, you would have no knowledge of that would you?

A. No recollection; no, sir.

Q. So that you, on your figures which show that the Item had a slight decrease in 1950 over 1949, you have no knowledge as to whether that is the first such alleged decrease or whether it is one of a series of what it is?

A. No, sir.

Mr. Kramer: On general advertising?

Mr. Phelps: On general advertising.

Q. Are you familiar with the term "cooperative advertising?"

A. No, sir.

Q. You don't know whether cooperative advertising has anything to do with general advertising or not, then?

A. No, sir.

Q. So that your chart would not reflect, so far as you know, the effects of cooperative advertising on your comparison between the 1950 and 1949?

A. It is purely a speculative question, as far as I am concerned: What is reflected on the chart is such a broad subject.

Q. Surely. I am not trying to trap you.

Cooperative advertising, I will advise you, for purposes of this question, is advertising in which a general or national advertiser places his ad through a local retailer on a basis on which the general advertiser contributes toward the cost of the ad.

[fol. 773] Does that tie in with some other definition that you would know? In other words, are you familiar with that type of advertising?

A. No, I am not familiar with it.

Q. You don't know anything about that type of advertising?

A. No, sir.

Q. But your chart, so far as you know, would not reflect any such advertising?

A. I have no way of knowing, one way or the other.

The Court: In other words, if Media Records carries that general advertising under that category your charts would reflect it?

A. Yes, sir.

By Mr. Phelps:

Q. Your chart does not take into consideration the effects of the personal element in the sales of general advertising, does it? In other words, if there were any change of management in 1949 or 1950, which I think we will all agree might affect your lineage, your chart would not be able to point that out, would it?

A. The chart would not.

Q. That would be true whether the change of management were at the top—that is the executives of The Item Company—or whether the change had been in a change of selling personnel. Isn't that true?

A. I don't understand the question.

Q. Well, if The Item had changed management in 1949 or 1950, that might have an effect on their lineage figures, I assume, mightn't it?

A. Yes, sir.

[fol. 774] The Court: In other words, your charts show changes but they do not show the causes of the changes?

A. Correct.

Q. Similarly, if there had been any wholesale dismissals or firings of sales personnel, that would not be reflected on your comparison, would it, as such?

A. It could be.

Q. It could be reflected as either a decrease or as a gain?

A. Yes, sir.

Q. But that is a factor not taken into consideration by you in defining the limits of your chart?

A. No, sir.

Q. You say it is not taken into consideration?

A. No, sir.

Q. It is not.

A. My only consideration was what the Media Records carry as general display advertising lineage.

Q. I ask you if it is not a fact that 1950 was the best year that The Item Company has ever had? It or its predecessors, in general advertising, six-day, in its entire history, with the debatable exception of 1949?

A. I don't know. I haven't made a study of its entire history.

The Court: I don't suppose you know what is debatable about 1949 either, do you?

A. No, sir.

[fol. 775] Mr. Phelps: Well, I had in mind, if the Court please, the difference in classification of automotive and financial; also the difference in connection with the month of December.

The Court: I see.

By Mr. Phelps:

Q. Turning to Chart 108-A, that is what is known as a percentage chart, isn't it?

A. Yes, sir.

Mr. Phelps: If the Court please, at this time Your Honor may recall that I objected to the admissibility of this Exhibit 108-A and its counterpart, for the reason that there was no showing of any interdependence or interrelationship between the lineage of the States and of the Item; also for the reason that the chart was distorted. I would like Your Honor, if you will, to reserve my objection to all questions with respect to this particular chart and permit me to cross examine the witness on the basis of the chart's being in evidence but still reserving to me my objection to its admissibility.

The Court: As I understand, this chart simply reflects the manner in which the lineage, advertising lineage, general display, is divided between the two newspapers. I don't think it purports to reflect any connection between the two. On the basis of this chart as one increases the other necessarily decreases.

Mr. Phelps: Unless there is some showing that that is true. However, if the Court please, the chart is wholly irrelevant.

Mr. Kramer: If what is true?

[fol. 776] The Court: It must be true, if you are dividing. In other words, it simply reflects how the advertising is divided between the two: not the causes for the division or why the advertiser places his ad in one paper and not the other.

Mr. Kramer: That is because there are only two evening newspapers in New Orleans, so that it must follow.

Mr. Phelps: In any event, Your Honor has ruled that the objection would go to the weight of the testimony.

The Court: You want to examine him subject to your objection?

Mr. Phelps: Yes, sir.

Mr. Kramer: May I be heard on the objection? I have no objection to reserving time to show this is distorted, but

I would like a ruling as to the admissibility, on the theory it has been prepared——

Mr. Phelps: The Court has ruled it went to the weight of the exhibit.

On that basis, I would like to examine the witness as to what weight should be attributed, if any, to the chart.

The Court: Very well.

By Mr. Phelps:

Q. Mr. Houghton, as a statistician you are very well aware that percentage charts are very dangerous types of charts to draw conclusions from, aren't you?

A. No, sir.

Q. In other words, unless the field is limited to a true unit [fol. 777] the percentage chart is meaningless, isn't it?

A. I don't understand your question.

Q. Applying it to your Exhibit 108-A, if there is no interdependence or no interrelationship between the lineage figures of the Item and the lineage figures of the States, six-day, then the chart has no significance at all, does it?

A. Would you please define the term "interrelationship?"

Q. Where one goes up the other goes down, and vice versa.

A. Now, your question, please.

(The Reporter read the last question.)

A. As you define it, there is an interrelationship between the two. Therefore, the chart has significance.

Q. It is perfectly possible for the Item to show a loss percentagewise on such a chart as this, while still having a very healthy gain in actual lineage, isn't it?

A. Yes, sir.

Q. So that unless the lineage of the States and the lineage of the Item bear some relationship to each other, such a chart as this does not reflect the condition or progress of either one of them, does it?

A. Yes; it does.

Q. Would you explain that?

A. It defines the relative progresses of one versus the other.

Q. Without any relation to each other?

A. There is definitely a relationship between each other by the chart.

[fol. 778] The Court: This chart simply shows how the afternoon advertising was divided between the two papers at various times.

A. That is correct.

By Mr. Phelps:

Q. What I am getting at is, isn't that chart premised on the proposition that the afternoon field, as such, has fixed limits?

A. No, sir.

Q. Well then, suppose you explain to us what the meaning of the chart is.

A. The meaning of the chart is that the total evening lineage has been set up and the proportion that the States had of that total computed and that the proportion that the Item had of that total computed, and the respective percentages plotted on the chart.

Mr. Phelps: If the Court please, I would like to renew my objection. I see absolutely no relevance to this chart in view of the witness' testimony.

The Court: It may not have very much weight, I concede: Standing alone, I can't see that it has very much weight, at all; but I certainly think it is admissible.

By Mr. Phelps:

Q. Well, the basic idea of the chart, Mr. Houghton, is that there is some purpose to be served by making a comparison between the afternoon field newspapers, as you put it. Isn't that correct?

A. Yes, sir.

Q. And you have not included in your chart any Sunday [fol. 779] lineage, have you?

A. No, sir.

Q. You haven't included any morning lineage, have you?

A. No, sir.

Q. In other words, that chart is predicated on the proposition that you can put the Sunday field on one side, the

daily field on another side, and then divide up the daily field into morning and evening. Isn't that correct?

A. Yes, but I don't think that gets to the chart, if I may say so. It goes further; it is confined to the evening field.

Q. I want an answer to my question. Your answer is .....?

A. I don't understand your question, then.

Q. The question is this: That type of chart is predicated on the idea that you can put to one side the Sunday field, to the other side the daily field, and that you can then divide up the daily field into morning and evening. Isn't that true?

A. Yes, sir.

Q. So that if you had a situation such as Dallas, where you have one paper published morning and Sunday and one published evening and Sunday, on that type of chart each paper, morning and evening, would show one hundred per cent of its particular field, wouldn't it?

A. I am sorry if my previous answer led into that question. This is confined only to the evening, and I don't think it follows that you can necessarily put morning and evening, or that this chart would refer to the morning and evening division.

[fol. 780] Q. That chart is predicated on your being able to make a similar chart for a morning field, isn't it?

A. As between two morning newspapers, you mean?

Q. As between whatever you would have. For instance, if you drew such a chart as that for the Times-Picayune you would show it had one hundred per cent of the morning field, wouldn't you?

A. Yes, sir.

Q. And in Dallas, where you have one morning and one evening, each one of them would have one hundred per cent of the field, wouldn't it?

A. I don't understand that.

Q. In Dallas, where you have one paper published six mornings,——

Mr. Kramer: I object.

Q. ——and another published six evenings, each paper on that type of chart would show that it had one hundred per cent of the field, would it not?

Mr. Kramer: I object, Your Honor, on the standing objection ground that it goes into the situation in other cities.

Mr. Phelps: It is an illustration, if the Court please.

The Court: He is citing it as an example.

Mr. Kramer: All right.

The Court: The answer is obvious. There would be nothing wrong with that if it is the only one in the morning field. What is wrong with that, as far as this chart is concerned? The chart would show it had a hundred per cent.

[fol. 781] By Mr. Phelps:

Q. It would show it had a hundred per cent. Isn't that right?

A. I didn't understand his question that way. I thought he said there are two morning and two evening papers.

The Court: No.

A. I didn't get the question.

By Mr. Phelps:

Q. In Dallas, where you have one morning and one evening paper, on that type of——

The Court: Suppose you reframe your question.

Q. In the instance where you have one morning paper and one evening paper in a community, on that type of chart each one would show one hundred per cent of the field, wouldn't it?

A. You would not have this chart on that type of example.

Q. If you did have this chart——

The Court: The answer to the whole thing is, before you can make any comparison there must be two. Isn't that it?

A. Yes, sir.

The Court: I think counsel is laboring this, and attaching to this chart a great deal more importance than the Court does.

Mr. Phelps: I will cease that particular line, Your Honor.

By Mr. Phelps:

Q. Coming to the Sunday situation in New Orleans, I assume that if you could have such a chart, six-days, you could prepare such a chart for the Sunday field, as you would call it, couldn't you?

[fol. 782] A. Yes, sir.

Q. (Presenting document to Court and witness): I show you a document marked "Defendants 15" and ask you what it purports to be.

Mr. Kramer: If you know.

A. It appears to be a chart showing the Percentage of Total General Display, National Advertising Lineage in the Sunday New Orleans Newspapers Carried by The Times-Picayune-States and Item, 1949-1950, Showing Annual Monthly Averages for the one paper, from 1946 to 1950, and for the other for one year: 1950.

(The document referred to was marked "Defendants 15" for identification.)

Q. That chart reflects that The Times-Picayune-New Orleans States showed a drop in general advertising from one hundred per cent during 1949 and the first two months in 1950 to approximately 57 per cent in the latter part of 1950, doesn't it?

A. Yes, sir.

Q. Do you happen to know what the Sunday lineage for the Times-Picayune was on general advertising in 1950?

A. No, sir.

Q. I put it to you as a fact that the Times-Picayune-New Orleans States had a gain on Sunday general lineage of approximately 30 per cent in 1950 over 1949, and I ask you if that wouldn't show a differential of about 75 per cent between this type of chart and real lineage figures?

The Court: You say that was the Item that had that increase?

[fol. 783] Mr. Phelps: The Times-Picayune-New Orleans States, Sunday.

The Court: Had an increase of what, in 1950?

Mr. Phelps: Had an increase in 1950 of approximately 30 per cent for general advertising.

The Court: Over what year?

Mr. Phelps: Over 1949.

In other words, if the Court please, again renewing my objection, this type of chart shows a loss on percentage of the field of about 44 per cent, whereas in point of fact the Times-Picayune Sunday had a gain of 30 per cent, or a differential of about 75 per cent.

Mr. Kramer: If the Court please, I think we are now at the point that completely illustrates the difference between counsel. The Government will contend, at the proper time rather than now, that it was the percentage of the market that is the important figure and the defendants are going to contend it is the absolute amount of lineage that is the important figure. I would suppose that should not be a battle of experts but I think we should take the mantle of expertness upon ourselves as lawyers and argue about it when the time comes.

Mr. Phelps: If the Court please, this type of testimony goes to the weight of the exhibit which the Court has admitted and to no other testimony.

By Mr. Phelps:

Q. If this chart is accurate, Mr. Houghton, it reflects that the Times-Picayune-New Orleans States had a percentage of the field loss of what per cent in 1950 [fol. 784] as against 1949?

A. Would you please restate the question?

(The Reporter read the last question.)

A. According to the chart, The Times-Picayune-States had approximately 66 per cent of the total general display advertising lineage in Sunday New Orleans newspapers in 1950 as compared with one hundred per cent in 1949.

Q. And you say you don't happen to know whether the lineage on Sunday, in the Times-Picayune-New Orleans States increased or decreased in 1950 over 1949?

A. I have no recollection of the actual figures.

Mr. Phelps: If the Court please, as long as Your Honor has admitted this other chart I am going to ask Your Honor to admit this chart and the supporting figures, which

I can only prove up by this witness by having him make an actual check of Media Records. I can produce Media Records and I can have him go through Media Records, one by one, or I can submit to the Court the supporting statistical data and ask the witness to confirm it at his convenience outside of Court. I believe it is admissible for that purpose.

Mr. Kramer: We have no objection if counsel will permit us to check the figures tonight, and we will tell you, but I did want to know whether you wanted to examine him, after he has checked the figures, on the figures.

Mr. Phelps: As far as I am concerned, I am sure I would not have any further examination.

[fol. 785] Mr. Kramer: I am sure if the arithmetic in these figures is correct the Government will have no objection to the admissibility of "D-15", reserving our right to talk about its weight at the appropriate time.

The Court: Now, let me see if I have it correctly, on this Chart 108. As I understand this chart it does not purport to show an increase or a decrease in the lineage carried as compared to the previous date, but it is simply to show how the advertising in the particular newspapers was divided between the two newspapers.

Mr. Kramer: The share of the market each one had.

Mr. Phelps: That is exactly our objection, and exactly the reason we have gone to this trouble to refute it. The term "share of the market" is utterly fallacious and utterly misleading. We believe that Defendants Exhibit 15 demonstrates that there is no such thing as "share of the market" within the evening field, the morning field, or the Sunday field.

Mr. Kramer: May I suggest we reserve argument on this until the appropriate time?

The Court: I don't think any further argument is necessary.

Mr. Kramer: The Government is going to contend at the proper time that the share of the market is *the* important factor. I don't want to be understood as waiving it, but I don't want to argue it now.

The Court: I understand.

[fol. 786] By Mr. Phelps:

Q. I show you a document marked "D-16" and ask you what it purports to be?

A. "Data for Chart Percentage of Total General Display (National) Advertising Lineage in The Sunday New Orleans Newspapers Carried by Times-Picayune-New Orleans States and Item, 1946 to 1950.

(The document referred to was marked "D-16" for identification.)

[fol. 787] Q. Mr. Houghton, I will ask you, with permission of Government counsel and of the Court, to verify the document, "D-16" at your convenience out of Court and on the occasion that you next take the stand you will be permitted, if Government counsel wishes, to explain whether this chart is accurate or not.

Mr. Phelps: If the Court please, I assume it would be more in order to introduce both these charts after the witness has completed his examination of his supporting statistics.

The Court: Very well. Court will take a recess until a quarter to twelve.

(Short recess.)

By Mr. Phelps:

Q. Mr. Houghton, in connection with the chart that you prepared on classified advertising, Government Exhibit 106-A, without going into too much detail, isn't it a fact that the following factors were not taken into account in the preparation of that chart: first, the Sunday Item in 1950?

A. It was not included in this chart.

Q. It was not included?

A. No, sir.

Q. That would appreciably change your figures if you had included it, wouldn't it?

A. I don't know.

Q. In other words, you don't know whether there was any classified advertising in the Sunday Item in 1950?

[fol. 788] A. I assume that there was, but I don't know how that affects this.

Q. Well, if there had been any, it would have affected your figures, if you had included it?

A. Included it where, with what?

Q. With your six day.

A. The chart was only for the daily lineage. It did not include Sunday.

Q. Since the record now shows that on March the fifth in 1950, the Item started a Sunday paper, my question is, the classified advertising in that Sunday paper, if any, was not included in your figures for the six day Item, 1950, was it?

A. That is correct.

The Court: Neither was the Times-Picayune-States?

The Witness: Correct.

By Mr. Phelps:

Q. Do you have any knowledge regarding the rate structure of the Item during the period covered by Chart 106(a)?

A. No, sir.

Q. So you wouldn't know what effect, if any, the rate changes had on that chart?

A. No, sir.

Q. You also did not take into consideration any change in management or change in personnel in the preparation of that chart, did you?

[fol. 789] Q. Now, looking at your exhibit 106-B, would you tell us what the lineage shown for the six day Item, classified, was in 1942?

A. 910,275.

Q. Would you tell us what the classified advertising lineage, six day, was for the Item in 1949?

A. 2,232,617.

Q. Could you estimate or compute, with pencil and paper as you prefer, the approximate percentage gained during that eight year period by the Item?

A. Well, it is more than doubled.

Q. Could you be a little bit more accurate?

Mr. Kramer: What is it? We will stipulate it, whatever you know it to be.

Mr. Phelps: I don't know what it is.

A. Approximately one hundred fifty per cent increase.

By Mr. Phelps:

Q. Would you tell me the lineage figures for the Times-Picayune morning and States evening in 1942 as shown on Government Exhibit 106-B?

A. Times-Picayune morning, 1,954,879; States evening, 1,957,057.

Q. And the same figures correspondingly for 1949.

A. Times-Picayune morning, 4,271,302; States evening, 4,420,193.

Q. Without making a calculation, isn't it correct to say that the percentage increase during that eight year period [fol. 790] for the Times-Picayune and States is approximately the same or comparable to that percentage increase for the Item?

A. Yes.

Q. Without any regard to the circulation figures?

A. Yes.

Q. In connection with Government Exhibit 109-A, 109-B, 110-A and 110-B, those figures don't take into consideration the lineage at all, do they?

A. No, sir.

Q. They show only the number of accounts?

A. Correct.

Q. Could you tell us if there is any variation in the number of accounts shown in 1950 as against 1949?

A. Yes. There are fewer accounts in 1950.

Q. What is the figure?

A. I don't have the exhibit in front of me.

Q. I am sorry, I thought you did. (Handed exhibit to witness).

A. The total number of accounts in 1950 included in the study were 943 as compared with 1,023 for 1949.

Q. Is that a loss of eighty accounts in '50 over '49?

A. Yes.

Q. And isn't it a fact that the Item lost twenty-nine accounts in '50 over 1949?

A. You mean the Item only?

Q. The Item only.

[fol. 791] Mr. Kramer: Does he mean that?

Q. That has reference to all accounts in which the Item is mentioned.

A. Would you repeat the question, please?

Q. I will rephrase it. Isn't it a fact that, comparing '50 and 1949, there were twenty-nine accounts in which the Item—twenty-nine subdivisions in which the Item appears—strike that out. Isn't it a fact that in comparing '50 against 1949 that of those subdivisions in which the Item lost accounts, there was a loss of twenty-nine accounts?

A. I don't understand your question. I mean it is conglomerated. Could you break it up?

Mr. Phelps: If the Court please, I think the figures will speak for themselves, so I won't pursue that line of questioning any further. We have no further cross-examination of this witness at this time, but we reserve our right to further cross-examination on 109-A and B and 110-A and B for the reasons that we only received 110-A and B when Court opened this morning.

Redirect examination.

By Mr. Kramer:

Q. Mr. Houghton, I believe the first thing you were questioned about was the exclusion of the automotive and financial display advertising from—or in the preparation of Charts 107(a) and 108(a). I will hand you Media Records for December, 1950. Can you tell me if that is as typical a month as any other in terms of the classifications you see there?

[fol. 792] A. Yes, sir.

Q. Now, will you read to the Court, please, the classifications that Media Records has.

A. Retail display, general display, automotive display, financial display, classified, legal. That is all.

Q. Now you knew, did you not, that some automotive and some financial was national advertising?

A. Yes, sir.

Q. At the time you made the chart?

A. Yes, sir.

Q. Tell the Court why you did not include it in your study.

A. I didn't know enough of the details of the various accounts or how they are sold to qualify myself as making a breakdown of each of the accounts in order to eliminate national—such as are sold on a local basis from those sold on a national basis.

Q. Do I understand you to mean that some automotive and some financial are retail display, as has been used throughout the trial, and some automotive and some financial are general display?

A. That is my understanding.

Q. And you stuck to Media Records classification, is that it, whatever it showed?

A. That is correct.

Q. Did you ever make any kind of a spot check—you were asked if you made a study and you said no. Did you ever make any kind of a spot check to determine whether it would make any difference if you were able to find some-
[fol. 793] one who could tell you with respect to each automotive and financial account whether it was local or general?

Mr. Wilson: Just a minute, I object to the question. The witness said he didn't know enough about them to separate them, he would have to know the individual accounts or he couldn't separate them. How could he make a spot check, if he doesn't have knowledge enough to make any check?

Mr. Kramer: The purpose of this testimony is not to show the fact, but to show the witness' state of mind, because of the imputation that it was deliberate. None of his testimony or his answer to this question will be directed to the truth of the things he has testified to, but to show the state of mind when he came to New Orleans.

Mr. Wilson: I understood his state of mind was that he didn't have any knowledge about it.

The Court: I think that the inference might have been drawn from the cross-examination that he deliberately suppressed this automotive and financial.

Mr. Phelps: If the Court please, I have no such intention. My questioning was directed solely to the fact that

the chart, in my opinion, did not accurately reflect the effect of the unit rate.

Mr. Kramer: I still would like this developed. Your Honor. This is a public hearing.

A. Repeat the question, please.

By Mr. Kramer:

Q. My question was, after you came to New Orleans to [fol. 794] participate in the testimony in this case, did anyone, anyone, call your attention to this problem of automotive and financial being excluded from Media Records?

A. Yes, sir.

Q. Who was the first person to call that to your attention?

A. Mr. Tims.

Q. Mr. John F. Tims, the defendant?

A. Correct.

Q. Where did he call it to your attention?

A. In the office of the defense counsel.

Q. All right. Did you then come back and endeavor to find out whether there was anything to Mr. Tims' statement to you, any significance?

A. Yes, sir.

Q. What did you do?

A. I discussed it with Government counsel and I discussed it with Frank Leming of the Item in order to see if it were possible to go through the accounts and eliminate any of the accounts, on the one hand, in the general display, which was sold on a local basis, and on the other hand, to add to such a total the accounts in automotive and financial which were sold on a national basis.

Q. And after doing all this, what conclusion did you come to?

A. I came to the conclusion that it required the resources of someone who knows the accounts better than I do in order to distinguish each account. Therefore, a full-fledged study should be made with the assistance of [fol. 795] such an expert.

Q. Do you know whether Government counsel agreed with your conclusion or not?

A. Yes, sir.

Q. Now, you have been asked some questions about the inclusion in Government Exhibits 107 and 108 of Saturday lineage for the Item in December, 1950, and you were told that the Item, for at least part of the month of December, 1950, published six papers, five of which might be termed daily papers and the sixth of which could be called either, depending upon the point that counsel in this case is trying to prove.

Mr. Wilson: I don't understand the question. Will you read it back?

Mr. Kramer: I haven't asked the question yet.

(Question read by reporter.)

Q. In other words, we are going to call them Sunday. My question is, do you know how Media Records for December, 1950, treated that sixth issue of the Item?

A. No, sir.

Q. You do not know. Now, you were asked several questions—strike that. Do any of these charts from Government Exhibit 106-A through 110-A include any Sunday lineage or accounts by any New Orleans newspaper?

A. No, sir.

Q. Will you state to the Court the reason why you ex-
[fol. 796] cluded Sunday when you prepared these charts?

A. It was to confine the area studied to the daily operation.

Q. Will you tell the Court why you wanted to confine the area of study to the daily operations?

A. Well, it appeared to me that the Sunday had no direct bearing on the question of what happened in the daily operations.

Mr. Phelps: If the Court please, is the witness now testifying as an expert on newspaper advertising? If so, I object to the question.

The Court: He is testifying with respect to the consideration which entered into the making of these charts, they way he did it. That is what I understand.

Mr. Kramer: Precisely, and I would never have gone into this if it hadn't been opened on cross-examination, and I now propose to go into it.

By Mr. Kramer:

Q. Do you remember the question?

A. Yes. I think I answered it.

Mr. Kramer: Will you read the answer?

(Answer read by reporter.)

The Court: You didn't know how Media Records treated this paper, the Item puts out on Saturday? You didn't know whether you were including that edition or not? That Sunday edition or Sunday paper, it is included, isn't it?

The Witness: No, sir, it is not included as a Sunday, [fol. 797] There is a question of whether it included five dailies or six dailies. The Media Records clearly distinguishes the Item Sunday, as it calculates it, from the daily. It is a question of whether they have included six days during the month of December, 1950, or five days.

By Mr. Kramer:

Q. So if they included six days and you prepared the chart showing five days, the position of the Item in December, 1950, would be that it had less lineage, would it not? Do you want me to rephrase my question?

A. Please.

Q. If Media Records included, for all of December, 1950, the advertising lineage carried by the Item for six days a week throughout the month, then your chart, your chart was prepared from that basis, then if you were to subtract one of those issues, the one denominated by some, Sunday issues, the chart would show a greater loss for the Item than it now does, would it not?

A. If you subtracted the whole week?

The Court: I don't understand the answer.

Mr. Kramer: I don't either, Your Honor. It is a fact, if the Court please, and the Government will stipulate, that the Item, during December, for two weeks, the last two Sundays and the last two Saturdays, got off this paper, that we can't agree on what it is to be called.

By Mr. Kramer:

Q. Now, my question, Mr. Houghton, is if Media Records [fol. 798] included the advertising lineage in those last—strike that. Do you know if Media Records carried the lineage of the two Saturday-Sunday issues in December, 1950, in its daily tabulation of general display advertising?

A. I do not know.

Q. If it did, it is reflected on Chart 107(a), is that correct?

A. Yes.

Q. If you took the lineage of those two Saturday-Sunday issues off, therefore, the position of the Item would decline, would it not?

A. Yes, sir.

Q. Now, if it did not include those two issues and you added those two issues to your chart, the position of the Item would go up, would it not?

A. Relatively, yes.

Mr. Kramer: So, it comes down, if the Court please, to what those issues, the Saturday-Sunday are called.

The Court: Can't you gentlemen stipulate that?

Mr. Kramer: Well, we are going to try to, but I doubt if we will get together.

Mr. Phelps: I know what the facts are, if counsel wants to stipulate on that. Counsel is testifying a little bit along the same line he objected to when I was doing the same thing.

By Mr. Kramer:

Q. Will you give the Court the reasons why you thought that a study of the monthly averages for general display advertising lineage in New Orleans daily newspapers, as shown on 107(a) was sufficient for 1949 and 1950 and [fol. 799] not for 1946, 1947 and 1948?

A. The period of interest for the chart was 1949 to 1950.

Q. Well, why was that the period of interest?

A. Because that is the period for which we are studying the effect of the forced combination on advertising lineage.

Q. You had been informed, is that it, by some Govern-

ment counsel, that the Times-Picayune adopted a unit rate in December, 1949, effective February 1, 1950?

A. Yes, sir.

Q. Now, looking at Chart 107(a), I will ask you to state to the Court just what significance that chart does have, in your opinion.

Mr. Phelps: If the Court please, is the witness going to testify as a newspaper expert at this stage of the trial?

Mr. Kramer: If the Court please, he was asked questions as to what detracted from its significance on cross-examination. Now, I submit we have the right to ask him what adds to it.

Mr. Phelps: My questions were directed to his capacity as a statistician.

Mr. Kramer: If the Court please, I think what it comes down to as to this chart, is whether Your Honor is interested or not. If you are, I will ask him about it, and if you are not, I won't.

The Court: I think I understand the chart.

Mr. Kramer: I withdraw the pending question.

By Mr. Kramer:

Q. Now, Mr. Houghton, I hand you Chart 108(a) and I [fol. 800] ask you to tell me what the purpose of the percentage charts is.

A. The purpose of the percentage charts is to show the distribution of the evening newspaper——

Q. No, any percentage chart.

A. Well, it is to show distribution between various components of any given total.

Q. And will you state to the Court the reason why you thought that the component on Chart 108(a), and the only component that should be examined, was the States and the Item.

Mr. Phelps: If the Court please, may I have a standing objection to the witness testifying as a newspaper expert without being qualified as such?

The Court: I don't think he is testifying as an expert. I think he is testifying as a statistician. I might point out with respect to this percentage chart that it follows the

same pattern of defendants' exhibit "D-15". I think there is probably some fear in counsel's mind that the Court does not understand this chart——

Mr. Phelps: I have no doubt about Your Honor's understanding. I want to make it clear, however, in the event there should be any appeal from Your Honor's decision. I think I would like to have the record entirely clear——

The Court: I am sure that anything that this Court can understand, the Supreme Court can also understand.

Mr. Phelps: Well, Your Honor has a singularly good knowledge in accounting matters. I believe you are par-
[fol. 801] ticularly familiar with it.

The Court: Well, I understand that because this chart, 108(a) shows in October, 1950, the Item had thirty-five per cent of the advertising in the afternoon paper, that doesn't mean that that is lost lineage, because the total advertising in the afternoon field at that time was greater than it ever had been. They might have an increase in total lineage, although the chart shows a decrease in the percentage.

Mr. Kramer: Precisely, and what we will contend at the proper time, Your Honor, is that it is the relationship of competitors to each other, not the absolute basis, and Your Honor did, I say with all good humor—cast some mild aspersions as to what 108(a) proves, just so you are not misled. We think it proves a lot, and I am trying to——

The Court: It simply proves how the advertising in the afternoon field was divided between these two papers at the particular time.

Mr. Kramer: And, therefore, because at those particular times, it shows trend for two years.

The Court: All right. I was going to make some observations about "D-15".

[fol. 802] Mr. Kramer: We have not objected to D-15, provided the figures are right, and we think that it shows a great deal about the Sunday field. We also think that other evidence in the case will show that.

The Court: The chart shows that the Times-Picayune, after the Item got in the field with a Sunday paper, had 65 per cent of the advertising. It doesn't mean that they lost 35 per cent of the lineage.

Mr. Kramer. Well, they might have gained in lineage.

The Court: They might have gained in lineage.

Mr. Kramer: If the Court please, we are not attacking—There is no unit rate in the Sunday field that we are attacking here. It is the daily field that the lawsuit is about with respect to unit rate.

The Court: That is beside the question.

I am talking about the purpose of the chart. Because one goes down and other goes up doesn't mean that one took away from the other.

Mr. Phelps: That is precisely our position, if the Court please, and it is diametrically opposed to the Government's position.

The Court: We are talking about the admissibility of the charts.

The question of weight to be attached and the significance of them are matters of argument, I think, and expert testimony. I know that you gentlemen have different theories or we wouldn't be here.

Mr. Kramer: Then, I should have objected to all of his examination, Your Honor, because much of his was designed [fol. 803] to make his oral argument through Mr. Houghton.

I would like to ask one or two more questions with respect to 108-A.

The Court: All right.

By Mr. Kramer:

Q. Mr. Houghton, will you state to the Court the statistical trend that you observed from Chart 108-A in general display advertising lineage in evening New Orleans newspapers from the beginning of 1949 to the end of 1950?

(Document handed to the witness.)

A. During the year of 1949——

The Court: Which chart is this:

By Mr. Kramer:

Q. Tell the Court the number on it.

A. 108-A.

The Court: All right.

A. The percentage of the total varied as between the States and the Item within ten percentage points.

Q. What year?

A. 1949.

Q. And in 1950, what happened?

A. In 1950, commencing with the month of February, there began to be a wide dispersion between the percentages of the respective papers.

Q. You mean by the respective papers, the Item and the States?

[fol. 804] A. The Item and the States; and by the latter part of the year, 1950, the spread had been increased substantially, the figure for the States being approximately 57 percent and that for the Item approximately 43 percent.

Q. Now, I show you Government's Exhibit 107-A and I ask you whether or not, in terms of ups and downs in the curve, the curve of the Times-Picayune and the Item did not follow roughly the same passage.

(Document handed to the witness.)

A. Yes. From month to month, there was a very close pattern.

Q. Between what?

A. In the fluctuations as between all papers; that is, they moved up and down in parallel, more or less.

Q. During what period?

A. During the years of 1949 and '50, on a monthly basis.

Q. My question was whether the Times-Picayune and the Item followed roughly the same snakelike pattern on that chart:

Mr. Phelps: For what period?

Mr. Kramer: For the year 1950.

The Court: The Times-Picayune?

Mr. Kramer: The Times-Picayune and the Item.

The Court: I think you had better look at that chart again.

Mr. Kramer: I don't mean that the lines were superimposed upon each other.

The Court: How about '47 and '48, for example? The [fol. 805] Picayune was going up and the Item coming down.

Mr. Kramer: I am talking about the righthand side, Your Honor.

The Court: There is no difference; '47 doesn't appear on the righthand side.

Mr. Kramer: No, and I am asking about the ups and downs of the Item as compared with the Times-Picayune.

The Court: For what years?

Mr. Kramer: For the months in 1950, after January.

The Court: I see. All right.

A. In 1950, the Times-Picayune showed a sharp rise from February to March, I believe it was. I would like the table to confirm the actual months.

Q. How about the Item?

A. Whereas, the Item shows a slight decrease.

Q. All right. Let's get the table.

The Court: Go back to '47, now, from '47 to '48. Didn't the same thing happen then?

The Witness: From 1947 to 1948, the Times-Picayune showed a rise, while the Item showed a decline, on an annual basis.

The Court: In 1948, '49 and '50, though, both showed a slight decline, the Picayune more than the Item?

Isn't that correct?

The Witness: Yes, sir.

Mr. Kramer: I never have made myself clear and I have [fol. 306] a point.

The Court: I didn't mean to take him over.

Mr. Kramer: That is all right.

By Mr. Kramer:

Q. Mr. Houghton, are the dips and rises in this chart shown on the righthand side of Government's Exhibit 107-A from February through December of the Times-Picayune and the Item closer in pattern than the pattern of the dips and rises of the States, as compared with the Item and the States as compared with the Times-Picayune?

A. The dips and rises in the Times-Picayune and the States are very similar.

Q. In 1950?

A. In 1950.

Q. Starting when did they become similar?

A. After February of 1950.

The Court: By the Item and the Picayune——

Mr. Kramer: He stated the States.

A. The States and the Picayune.

The Court: The States and Picayune?

The Witness: That is, they both rise and fall in concert, month by month.

By Mr. Kramer:

Q. Starting when?

A. Beginning throughout the year, actually.

Q. They both rose and fell?

[fol. 807] A. Yes, month by month. They moved up or moved down in the same period.

The Court: Beginning with January 1st?

The Witness: Yes, sir.

By Mr. Kramer:

Q. Now, can you tell anything from the 1950 part of Chart 107-A? Can you tell anything about general trends in advertising patterns in New Orleans?

A. Yes.

Q. In newspaper trends, what do you see there? What do you infer?

A. There is a very sharp rise in the lineage carried by the States, beginning after February, 1950, carrying up to approximately the level of the Times-Picayune. They achieved almost the same level by the latter part of the year.

On the other hand, the Item showed a tendency to decrease.

Q. From the beginning of the year to the end, you mean?

A. Yes.

Q. Looking at that Chart 107-A, would you have to have more knowledge, more information than is shown on it to tell whether or not people were spending more money for newspaper advertising in——

I withdraw that.

Mr. Houghton, you have testified as to the reasons why you selected the months in 1949 and 1950 and not for the preceding years for Chart 107-A.

[fol. 808] Would your answers to the same question be the same for Chart 108-A?

A. Yes, sir. It covers the exact time period.

Q. You were asked whether a change in management at the Item might cause a decrease in advertising lineage carried.

What was your answer to that, if you recall it?

A. I think the question was speculative. I said, "Yes. It could," as I recall.

Q. Couldn't it also cause an increase?

A. Yes, sir.

The Court: Was there an increase? You don't know.

The Witness: There was a general tendency to decline, as the chart shows.

The Court: I think we might stop here for the luncheon recess.

Mr. Kramer: Thank you, Your Honor. I would like to review my notes.

The Court: We will recess until two o'clock, gentlemen.

(Whereupon, at twelve-thirty, p. m., a recess was taken until two o'clock p. m. of the same day.)

[fol. 809] AFTERNOON SESSION

Redirect examination (Cont'd).

By Mr. Kramer:

Q. Mr. Houghton, will you resume the stand?

(Mr. Houghton resumed the witness stand.)

Q. I have on the easel, have I not, the enlarged copy of Government's Exhibit 108-A?

A. Yes, sir.

Q. You testified, didn't you, that Government's Exhibit 108-A is designed to show the proportion of general display evening newspaper advertising controlled by the States and that controlled by the Item in 1949 and in 1950?

A. Yes, sir. It covers the period 1946 through '50.

Q. I mean the right-hand part of the chart, Mr. Houghton.

A. Yes, sir.

The Court: You say "controlled?"

Mr. Kramer: Enjoyed.
The Court: All right.

By Mr. Kramer:

Q. State whether or not the percentages each enjoyed, or had (I think maybe now I have the better word), generally speaking, changed in 1950 from those in 1949?

A. Yes.

Q. Now, will you please state to the Court the reasons why, if any, it is helpful to know the percentage of the [fol. 810] market by each of the competitors in that market at any given time.

Mr. Phelps: If the Court please, I would like to, at this time, urge a standing objection to this witness testifying as an expert on newspaper advertising. May I have the record show a standing objection on that point?

The Court: Let the objection be made general.

(The Reporter read the last question.)

A. One of the first criteria of market control which is examined at any particular time is the extent of the control of the leading members of the industry, the proportion of the total market area that is controlled from time to time by the leaders in the industry as compared with the balance of the industry.

Q. Will you please state to the Court the reasons why, if there are any, it is helpful to know the change in the percentage in the market had over any given period of time by each of the competitors in the market?

A. It is significant to know the shifts in the proportions of control that are indicated in the hands of the leaders to suggest changes in the competitive characteristics of the industry to determine whether there has been any suggestion in the decrease or increase in competition.

Q. Now, who do you understand to have been in the evening general display advertising newspaper advertising market in New Orleans in 1949 and in 1950? What are the names of the newspapers who you understand to have been in the market in New Orleans, in general display advertising in the evening?

A. The States and the Item.

[fol. 811] Q. Right.

Now, in that market who was the leader in 1949, if any?

A. The leader shifted, from month to month.

Q. All right. Who was the leader in January, 1949?

A. The States.

Q. February, '49?

A. The States.

Q. March, 1949?

A. The States.

Q. April, 1949.

A. The States.

Q. May, 1949?

A. Could I have the tabulation sheets? It is a little hard to trace it exactly by months.

Q. (Handing document to witness) April, 1949?

A. The States.

Q. May, 1949?

A. The Item.

Q. June, 1949.

A. The Item.

Q. July, 1949.

A. The States.

Q. August, 1949?

A. The Item.

Q. September, 1949?

[fol. 812] A. The States.

Q. October, 1949?

A. The States.

Q. November, 1949?

A. The States.

Q. December, 1949?

A. The Item.

Q. January, 1950?

A. The Item.

Q. February, 1950?

A. The Item.

Q. March, 1950?

A. The States.

Q. April, 1950?

A. The States.

Q. May, 1950?

A. The States.
Q. June, 1950?
A. The States.
Q. July, 1950?
A. The States.
Q. August, 1950?
A. The States.
Q. September, 1950?
A. The States.
[fol. 813] Q. October, 1950?
A. The States.
Q. November, 1950?
A. The States.
Q. December, 1950?
A. The States.

Q. Will you state whether or not, in your opinion, the growth in the percentage of control in the hands of the States in 1950 brought about a change in the competitive characteristics of the market for general display evening newspaper advertising in New Orleans from 1949 to 1950, basing your answer on Chart Government Exhibit 108-A?

A. In my opinion the chart indicates that there has been a basic reorientation in the market position of the two newspapers: that whereas in the past, at least in the immediate past period there has been a jockeying for position as between the two papers, that since February, 1950, there has been a new orientation and the States has moved to a level which is distinctly apart from that of the Item, suggesting that if you may interpolate in this chart that there will be a tendency for the Item to be in a lower position relative to the States.

Q. When you speak of higher and lower position, you are referring only to general newspaper display advertising?

A. General display advertising shown on the chart.

Mr. Kramer: No further redirect examination.

The Court: As a matter of fact, the most recent indication is a tendency to level off again, or to come back together?

[fol. 814] A. You are referring to the latter part of the year?

The Court: Yes.

A. I think it is a little difficult to tell because of the seasonal characteristic that is in the chart. You will notice that in the corresponding period of the previous year there is a rise in proportion over the Item. I think you need a little longer span in order to determine that. However, there is still, in my opinion, a very significant gap between the two levels.

Getting back to the question of the origin of the spread, as to whether there has been any change in the characteristics of the market which would tend to bring the Item back to the level of the States.

The Court: Well, there was a disposition to spread in February of the preceding year, too, wasn't there? In the early part of the preceding year?

Mr. Kramer: You mean here (indicating on chart), Your Honor?

The Court: Not as pronounced.

A. Well, it was relatively minor in my opinion. I don't think there was ever a gap such as this.

The Court: It may have been more minor at the end than at the beginning of the period. The disposition at the end of the period was to go back together.

A. There is a lot further to travel at the end of the year than there was during any of the months of 1949. The maximum gap was ten percentage points, a little less than ten percentage points, in 1949; whereas, the maximum gap is from 35 to 65 or thirty percentage points, and the end-of-[fol. 815] the-year gap was approximately—well, it was from 42.5 to 57.5. I think the difference in the gap is of some significance.

Mr. Kramer: I would like to observe——

The Court: Do you want to ask a question?

Mr. Kramer: It has nothing to do with this testimony:

I would like to observe that there was objection during the morning session to referring to the last month. The Government is sticking to it. If you recall, counsel indicated some objection because of the difficulty of determining what the Sunday picture was.

I have no further questions on redirect.

Mr. Phelps: We have no further examination of the witness.

(Witness excused.)

Mr. William N. Hurlbut, a witness called by and on behalf of the Government, being first sworn, was examined and testified as follows:

Direct examination.

By Mr. Kramer:

Q. Please state your name, and spell the last name.
A. William N. Hurlbut. (Spelling) H-u-r-l-b-u-t.
Q. Where do you live, Mr. Hurlbut?
A. Pelham Manor, in New York.
Q. Are you with the International Paper Company?
A. Yes, sir.
[fol. 816] What is your position?
A. Vice President and Director.
Q. What office did you hold with the International Paper Company in 1939?
A. The same.
Q. Have you held those offices continuously from '39 to date?
A. Yes.
Q. In following my questions, Mr. Hurlbut, when I refer to the International Paper Company, I always intend to refer also to any or all of its subsidiaries. If at any point that becomes confusing in your mind you may, of course,——
A. I am not a Vice President and Director of all of our subsidiaries.
Q. I meant from now on, Mr. Hurlbut.

Mr. Wilson: If the Court please, I think we should keep these questions separate, unless he can show the *the* witness is qualified to answer.

The Court: Is there more than two? The International Paper Company and International Paper Sales Company?

Mr. Kramer: It is limited to those two: Just to shorten the questions.

Mr. Wilson: Providing the witness is competent to answer for both.

The Court: ~~Very~~ Well.

Mr. Kramer: I will repeat the name of the subsidiary [fol. 817] each time, Your Honor.

The Court: Very well.

Mr. Kramer: But I will refer to it as the "Sales Company."

By Mr. Kramer:

Q. Now, in the year 1939, did the International Paper Company have a contract for the supply of newsprint to The Times-Picayune Publishing Company?

A. The Sales Company did.

Q. When was that contract terminated?

A. I think it expired the end of '39.

Q. Do you remember when the Paper Company or the Sales Company received notice of the cancellation?

A. The termination was automatic.

(Handing document to counsel.)

Mr. Kramer: If the Court please, I offer Exhibit 111 Minutes of the defendant, The Times-Picayune Publishing Company, the authenticity of which I understand to be stipulated, for August 14, 1939: These Minutes I will not read all of them for they are quite irrelevant. There is just one paragraph I would like to read:

> "RESOLVED, that the President of this Company be and he is hereby authorized to notify The International Paper Sales Company that this Company elects to cancel as of January 1, 1940, the existing contract for newsprint, and that the President of this Company with the approval of the Finance Committee be and he [fol. 818] is hereby authorized to enter into a new contract for newsprint for the year 1940 or longer with such company or companies and on such terms and conditions as may seem desirable."

[fol. 819] After 1940, January 1st, when the contract terminated, did you, yourself, make any effort to have a new

contract for the supply of newsprint paper by the International Paper Company or the Sales Company to The Times-Picayune Publishing Company?

A. Yes. I saw Mr. Leonard Nicholson on several occasions in early '41 soliciting the business.

Q. Did you see him, if you recollect, at any time in 1940 in that connection?

A. Not that I can recall, no.

Q. Now, did the International Paper Company or the Sales Company in the spring of 1941 have a contract to supply newsprint to The Item Company?

A. Yes.

Q. At that time, state whether or not The Item Company was indebted to the International Paper Company or the Sales Company.

A. In the spring of '41, The Item Company owed the Sales Company approximately $85,000 overdue for newsprint plus about $15,000 for interest.

Q. Will you state whether or not the International Paper Company or the Sales Company in 1941 entered into negotiations to purchase the Item?

A. We did.

Q. State the reasons why the International Paper Company or the Sales Company entered into these negotiations.

A. I think I already covered that in the deposition: the reasons,

[fol. 820] We first had to determine whether this sick customer could be salvaged. The question was whether to let it die, lose our $100,000 or make an attempt to revive it.

If we decided to let it die, that was that. It had only been one afternoon newspaper in New Orleans.

I finally arrived at the conclusion, after carefully studying the situation, that it could be salvaged.

Q. Who represented the International Paper Company during these negotiations respecting the Item?

A. I did.

Q. You did. Did anyone else?

A. I was always accompanied by Mr. Earl Wheatly.

Q. Will you spell his name.

A. W-h-e-a-t-l-y. He was then vice president of the Sales Company.

On many occasions, I was accompanied by Mr. John F. Howden, a member of our company legal staff.

Q. Who represented The Item Company during the negotiations preceding the final results?

A. Well, I would say, principally, Colonel James Thompson; on occasion, Mr. Claude Rives of the Whitney National Bank, and I had some negotiations with Mr. Zemurray, not acting for The Item Company, but as a large stockholder of the Item.

Q. Now, can you state to the best of your recollection when the negotiations commenced with Colonel Thompson on your part?

[fol. 821] A. Sometime in the late winter or early spring of '41.

Q. Do you remember where the first meeting in this connection that you had with Colonel Thompson was held?

A. I wouldn't be sure. I think it was held in his office.

Q. In New Orleans?

A. In The Item Building.

Q. I meant: In what city?

A. New Orleans.

Q. State to the best of your recollection what transpired at that first meeting with Colonel Thompson in his office or elsewhere in New Orleans?

A. I think I told him that we had reached the conclusion that the Item could be saved as a newspaper; that to accomplish that, it would require new management, buying him out.

After a number of meetings, we came to an agreement, as far as his ownership was concerned.

Q. Do you remember whether or not you discussed with Colonel Thompson at this first meeting the question of discontinuing the publication of the Sunday Item?

A. I wouldn't be sure at which meeting that was discussed.

Q. But you did bring it up with Colonel Thompson?

A. Definitely.

Q. State the substance of what you said on that occasion about the Sunday Item.

A. That was about ten years ago. I think I told him that, [fol. 822] in our opinion, in order to salvage the Item, it would be necessary, in fact, essential, to discontinue the Sunday Item. It was the weak sister dragging the whole company down.

Q. Do you remember whether or not at that time he agreed or disagreed with you?

A. He didn't violently disagree. I wouldn't say that he agreed. It was his baby he was talking about.

Q. State whether or not Mr. Zemurray agreed with the International Paper Company's program for the Item?

A. Mr. Zemurray agreed completely with our program.

Q. What was the effect of these conversations that you had with other stockholders, if any? I mean, if any effect regarding Colonel Thompson's willingness to go along on the International Paper Company's plans for the reorganization of the Item?

A. I don't think I understand the question.

Q. You stated that you spoke with Mr. Zemurray.

A. Yes.

Q. Did Mr. Zemurray then speak with Colonel Thompson in your presence?

A. After we got in pretty well along with our negotiations, Colonel Thompson said he wasn't going along with us.

I told Mr. Zemurray of that.

He was very mad and said that he would bring Jim, as he referred to him, back in line.

He called him on the telephone and asked him to come to [fol. 823] his, that is, Mr. Zemurray's office; and, thereafter, we proceeded with our deal with Colonel Thompson.

Q. Now, did you ever enter into a written memorandum of agreement with Colonel Thompson concerning the arrangements with International Paper Company?

A. I am not definitely sure whether we did or not. My recollection is that we depended on Mr. Claude Rives to bring everything pertaining to the Item together.

Q. Who was Mr. Claude Rives? And how do you spell his name?

A. R-i-v-e-s. He was then vice president of the Whitney National Bank, New Orleans.

Q. At any rate, it is correct, is it not, that if you embodied it in a written memorandum, you don't have a copy of it now?

A. Right.

Q. State whether or not one of the terms of that agreement, written or oral, was that the Sunday Item was to be discontinued.

A. It was definitely one of the items, and I think it was provided for in the second mortgage which we gave Colonel Thompson in part-payment for his holdings of the Item.

Q. Well now, what was the first occasion on which you met with Mr. Ralph Nicholson in connection with the negotiations about the transfer of ownership of the Item?

A. Sometime in the spring of 1941.

Q. And where was that meeting held?

[fol. 824] A. I think in New York, in my office.

Q. Do you remember who else was present?

A. Mr. Wheatly, Mr. R. C. Doane, who was then a vice president of International Paper Sales Company.

Q. Can you state for the Court the substance of the conversations had between International Paper Company's representatives and Mr. Nicholson at this first meeting?

A. That we thought there was an opportunity to reorganize the Item, that it was essential to that that new management should be provided and we offered him the opportunity to become the new publisher if we succeeded in our reorganization.

Q. Do you remember whether or not at that meeting you mentioned to Mr. Ralph Nicholson the necessity of discontinuing publication of the Sunday Item?

A. I don't recall.

Q. You don't recall whether it was at that meeting or some subsequent meeting?

A. That is right.

Q. Now, do you have any particular recollection of any subsequent meeting between yourself and Mr. Ralph Nicholson regarding his taking over the Item, other than this first meeting and the final meeting at which the arrangement was consummated?

A. The reorganization of the Item was quite a complicated matter involving ultimately simultaneous agreement

with a number of parties. As the prospective publisher of the new Item Company, I, of course, got Mr. Ralph Nichol- [fol. 825] son informed from time to time of our progress. [fol. 826] Q. But that is the best recollection you have now of any other meetings other than the first one and the one at which the deal was consummated?

A. Well, we had probably three or four meetings from the first one to the final one.

Q. And were those meetings, if you remember, in New York or New Orleans?

A. I would say they were in New Orleans, after the first one.

Q. But no one of those three meetings stand out in your mind in terms of what happened at that particular meeting?

A. No, except that in the course of those meetings, Mr. Ralph Nicholson, of course, became acquainted with our program to discontinue the Sunday and he concurred in it.

Q. What do you mean by "concurred in it"?

A. Agreed that it was wise.

Q. He agreed that it was wise?

A. Yes.

Q. Did the International Paper Company derive any benefit from the discontinuance of the Sunday Item, or the Sales Company?

A. It was a very essential step, in our opinion, in the conversion of a sick and dying customer to a happy one.

Q. Will you explain that, Mr. Harlbut?

A. Well, the Item, at the time I became interested in it, was on its way out unless something was done about it.

Q. It was in failing circumstances?

[fol. 827] A. It was going to disappear, go bankrupt, and the first question was, can you salvage it. It was a very important decision because it involved our putting in an additional two hundred fifty to two hundred seventy-five thousand dollars in order to provide sufficient working capital, and I had the responsibility of recommending that to our Board of Directors, and I naturally would have been criticized if the plan had not been successful.

The Court: You already had $100,000.00 in it?

The Witness: That is right. $85,000.00 plus $15,000.00

early in the Spring. By the time the matter was concluded, it was something over $125,000.00, overdue.

By Mr. Kramer:

Q. Do you know Mr. L. K. Nicholson?

A. I do.

Q. When was the first time you met him?

A. I think in the Spring of 1941.

Q. Do you recall where was the first time you met him?

A. I think in his office in New Orleans.

Q. Was anyone else present at that first meeting other than you and he?

A. Mr. Wheatly and the late Mr. Edmund Phelps.

Q. Do you remember what was discussed on occasion of this first visit to Mr. Nicholson?

A. Our great desire to renew our relationship with the Picayune.

[fol. 828] Q. What did Mr. Nicholson say in respect to your question how you could obtain the newsprint business of the Times-Picayune?

A. He was in this position, that is, the contract with us, our Sales Company, had expired either by notice or by its term, I don't remember which, in December, 1939. He contracted to furnish from a Finn source and another Canadian company which had two mills, one on the mainland and one on the Island of Newfoundland. By the beginning of 1940, or somewhere around then, his Finnish supply was cut off, and by early '41, at least a substantial portion of his Canadian supply coming from Newfoundland was also endangered, to say the least. We knew that the International Paper Company was a reliable source of supply, with three large Canadian mills not dependent on water shipment, and I certainly, to the best of my ability, pointed out those facts favorable to us to him.

Q. My question is, what did Mr. Nicholson say, not what did you say.

A. He said he would take it under consideration.

Q. Did he say anything else at that time about that subject that you can now recall?

A. Not that I can recall.

Q. Now, will you state to the best of your recollection the next visit with Mr. Nicholson, telling who was present, where the meeting was held, and the substance of what was said?

A. With the possible exception of times when I visited Mr. and Mrs. Nicholson in their home when no business was [fol. 829] discussed, I am quite certain that at every meeting, Mr. Wheatly was present and Mr. Esmond Phelps.

Q. Now, state the substance of what was said at any meeting other than the first one with Mr. Nicholson, business meetings, that is.

A. Well, the main thing on my mind was to obtain a renewal of his newsprint contract, and to the best of my ability and Mr. Wheatly's ability, we urged the advisability of a contract with us for their newsprint.

Q. Now, in any of these conversations with Mr. Nicholson in the Spring of 1941 concerning newsprint, did you discuss or mention the New Orleans Item newspaper situation with him?

A. I told Mr. Leonard Nicholson that we contemplated reorganizing the Item and finally, when our plans were well along, I told him that a part of our program was to discontinue the Sunday Item.

Q. And what did he say in reply to that?

A. He made no comment.

Q. Do you know Mr. John F. Tims, Jr.?

A. Yes.

Q. When was the first time that you met him?

A. I would say in June of '41, but I am not firm in that recollection.

Q. When did that first meeting occur?

A. I think it was in Mr. Leonard Nicholson's office in New Orleans.

Q. Do you recall what was discussed between you and Mr. [fol. 830] Tims or in the presence of Mr. Tims on that first meeting you had with him?

A. To the best of my recollection, it was just a casual meeting with no business discussion.

Q. Do you recall whether you ever again saw Mr. Tims during the Spring or Summer of 1941 and talked with him?

A. I may very well have seen him two or three times afterward, but it made no impression on my mind.

Q. Do you recall whether you ever discussed the newsprint contract with the International Paper Company with Mr. Tims during the Spring or Summer of 1941?

A. I think our discussions were limited to the Times-Picayune, to discussions with Mr. Leonard Nicholson and Mr. Esmond Phelps.

Q. Now, returning to your dealings with Mr. Ralph Nicholson will you state where the arrangement between the International Paper Company and Mr. Ralph Nicholson were completed?

A. I think the verbal agreement was probably made in our rooms in the Roosevelt Hotel here, subsequently confirmed by an exchange of letters.

Q. Do you remember a meeting in the office of Deutsch-Kerrigan & Stiles?

A. There was, of course, a meeting in Deutsch-Kerrigan's office when the whole closing occurred.

Q. That was the meeting to which I was referring. I wonder if you could tell us, to the best of your recollection, who was present at that meeting?

[fol. 831] A. There were a lot of people present. Deutsch and Kerrigan, Wheatly, Howden, Rives, Ralph Nicholson, Colonel Thompson, and I think other Directors of the old Item Company, whose names I don't recall.

Q. Now, state in substance, avoiding technical explanations, just what occurred at that meeting.

A. The old Item Company was dissolved. The new Item Company took over its assets and liabilities. I would say that sums it up in laymen's language. There were an awful lot of legal documents and technicalities to be complied with.

Q. Who became the owner of all the shares of Common Stock in the new Item Company?

A. Mr. Ralph Nicholson.

Q. And where did he get the money to buy all those shares of Common Stock?

A. We advanced the money, the International Paper Company.

Q. In exchange for what security, if any?
A. Holding the Common Stock as collateral, all of the ommon Stock.
Q. And what was the amount loaned?
A. $400,000.00.
Q. Now you spoke earlier, that is to say you testified arlier, that it was prior to this meeting in Deutsch and errigan's office that you and Mr. Nicholson had reached ubstantial agreement as to what the deal was to be, fol. 832] and I think you testified about five minutes ago hat you embodied it in a letter or that you subsequently ent a letter to him, is that right? Did I understand you orrectly?
A. Yes.
Q. Now is that letter still in existence?
A. No.

The Court: You said it was an exchange of letters, did you ot?

The Witness:

By Mr. Kramer:

Q. Is your letter to Mr. Nicholson now in existence? hat is a carbon copy of it?
A. No, it is not.
Q. Do you remember the last time that you saw it?
A. Oh, it might have been a year ago.
Q. Will you please state to the Court, to the best of your ecollection—strike that. Do you know the reason why the etter is not now in existence?
A. It had ceased to have any interest to us. The matter as closed. We had received our money.
Q. Do you remember whether it was you who saw to it hat the letter was disposed of or whether it was someone lse?
A. I don't recall whether I destroyed the file or my secre-ary.
Q. If your secretary did, did she do it on your instruc-ons?
fol. 833] A. No, I wouldn't think so.
Q. Mr. Hurlbut, you have testified that the letter was

destroyed about a year ago. Is there any way, anything you can think of, or anything that you could consult that would permit you to give a more accurate estimate than "about a year ago"?

A. No, the letter had lost its importance to me. I just don't remember exactly when.

Q. Will you state to the Court the first time that it came to your attention that the Department of Justice was investigating the newspaper situation in New Orleans?

A. Could you repeat that?

(Question read by reporter.)

A. I don't recall whether I read it first in the newspaper or Editors and Publishers or received the subpoena. I just don't remember.

Q. Now, will you state, to the best of your recollection, what the letter that you wrote to Mr. Nicholson, which is now no longer in existence stated?

A. That he owed us $400,000.00, that we held the Common Stock of the Item Company as collateral to that indebtedness, that he had an obligation for ten years to pay us the $400,000.00 with interest quarterly out of the earnings of the Item Company. I don't recall whether the letter excluded any personal obligation on his part, but it certainly only mentioned that he was obligated to pay out of the earnings of the Item Company.

Q. Was there anything else in the letter that you remem- [fol. 834] ber now?

A. That he would discontinue the Sunday Item and keep it discontinued for ten years.

Q. Now, the ten year period commenced in July of '41, is that right?

A. I think it was to start with the date of the initial discontinuance.

Q. Well, what was that date?

A. I think it was the latter part of July, '41.

Q. After you destroyed the letter, the copy of the letter, which you had, which was, as I understand it, sometime in 1950, did you advise Mr. Nicholson or the subsequent owners of the Item, either orally or in writing that he or they were released from the terms of that agreement?

A. Would you repeat the question?

(Question read by reporter.)

A. No.

Q. By Mr. Nicholson, of course, I meant Mr. Ralph Nicholson.

A. Yes.

Q. Now, returning to your negotiations—strike that. Calling your attention to your efforts to renew the contract of the International Paper Company or the Sales Company with the Times-Picayune Publishing Company, I will ask you whether or not your efforts in that respect proved successful.

A. Yes.

Q. When did you obtain a new contract to supply paper [fol. 835] to the Times-Picayune Publishing Company?

A. The Sales Company concluded a contract with the Picayune in August, 1941, starting January 1, 1942.

Q. August, 1941. I hand you Government Exhibit 101 which has already been admitted in evidence at this trial, Mr. Hurlbut, and I will ask you to tell me whether that is the contract to which you have just referred?

A. Yes.

Q. At the present time, does the demand for newsprint paper in the United States exceed the supply?

A. I think they are very closely in balance at the moment.

Q. Has there been a change in that situation since April 12, 1951?

A. I would say the demand has fallen off slightly.

Q. Now, I want to return, Mr. Hurlbut, to a question I asked you, or, at any rate, the answer you gave in the beginning of your testimony when you stated that—if I understood you—Mr. Ralph Nicholson concurred in the decision of the International Paper Company that the Item should, as a matter of good business judgment, discontinue publishing a Sunday newspaper. Do you recall having so testified earlier this afternoon?

A. Yes.

Q. And you are quite sure that Mr. Nicholson expressed the view, Mr. Ralph Nicholson that is, that he concurred in the judgment of the International Paper Company that the Sunday Item should be discontinued?

[fol. 836] A. I don't think I said he expressed the view. I think I said he concurred. I think his action in becoming publisher of the new Item Company and knowing of the obligation to discontinue the Sunday was in itself concurrence.

Q. Yes, sir.

A. Now, he may have concurred in so many words. I just don't remember.

Q. That is precisely the point I am getting at, Mr. Hurlbut. Was it a concurrence that he would abide by his agreement or was it a concurrence that it was a wise business move?

A. I think there is no doubt that he concurred that it was a wise business move.

Q. Now, one more question. When I asked you whether or not you advised Mr. L. K. Nicholson of your plans for the Item, including the discontinuation of the publishing of a Sunday paper, you said yes, is that right, that you did so advise Mr. L. K. Nicholson?

A. Yes, I think I used the word "told him".

Q. And, as I also recall your testimony, you said that to the best of your recollection, Mr. L. K. Nicholson made no comment after you told him that. Is that right?

A. I think it was about the same time, perhaps a little earlier that I offered Mr. L. K. Nicholson the whole Item Company.

Q. You offered to sell it to him, you mean?

A. Yes, turn it over to him when we reorganized it.

[fol. 837] Q. And what did he say then, do you remember?

A. He said he did not want a monopoly in New Orleans, that he preferred to have a happy competitor.

Q. My question is, do you recall whether or not at that time Mr. Nicholson stated to you that he did not want a Sunday newspaper monopoly?

A. I don't think he differentiated between a Sunday, daily or what kind of a monopoly.

Q. Can you remember now, Mr. Hurlbut, whether you destroyed your copy or your secretary destroyed your copy of that letter agreement before or after you learned of the Government's investigation of the Times-Picayune Publishing Company?

A. I think it was before.

Q. But you are not sure.

A. Not positive.

Q. Is there anything you could think of in your mind that would place it?

A. The letter that you are talking about had just lost all of its significance to me. It had no more interest to us. It was a closed transaction.

Q. Well, can you now recall the reasons that prompted you to make the agreement for a ten year term rather than until the obligation was paid off?

A. For the same reason that we thought initially it was advisable to discontinue the Sunday. In order to make the [fol. 838] Item Company happy, we thought it was desirable to keep up the discontinuance for ten years.

Q. But when 1950 came along, and nine years had elapsed, you decided it was no longer necessary, is that it?

A. Well, we had no ability—it wasn't within our power to stipulate any discontinuance of the Item for any greater length of time. We had no interest in the Item Company aside from the fact that we were selling them newsprint. We had received our money. We were out.

Q. Mr. Hurlbut, perhaps you don't understand my question. My question is that: the debt was paid off before the ten years ran out?

A. That is right.

Q. My question is, do you now remember the reasons why, in 1941, you didn't make the discontinuation of the Sunday paper co-terminous in time with the running of the debt?

Mr. Phelps: If the Court please, I think the record shows it was.

A. This obligation was an obligation, one, to discontinue the Sunday Item, and two, to pay us out of the earnings.

Q. I see. He paid you one year before he had to. Is that it?

A. Yes.

Q. Do you know whether Mr. Ralph Nicholson advised the owners of the Item to whom he sold of the existence of this agreement?

A. I do not know.

Q. You don't know whether he did or not?

A. No.

[fol. 839] The Court: You have been in the paper business a long time?

The Witness: Forty-one years.

The Court: You are familiar with publishing practices of newspaper publishers generally?

The Witness: Most of the forty-one years, Your Honor, has been devoted to newsprint and newsprint sales, and naturally I have been very well acquainted with a large number of publishers, many of whom are big publishers.

The Court: There has been considerable talk here about what is a Sunday newspaper and what is not a Sunday newspaper. What do you understand by a Sunday newspaper?

The Witness: Well, I would say that the normal Sunday newspaper comes out late Saturday afternoon and evening and early Sunday morning.

The Court: Would you call a newspaper which was printed and all editions of which were delivered on Saturday, no edition of which, for example, carried the results of the Kentucky Derby which was run at 3:30 on Saturday, would you call that a Sunday edition or a Sunday paper or a Saturday paper?

The Witness: You have me over a barrel there, Your Honor.

The Court: Well, if you can't answer it, all right. We are trying to straighten it out. Do you determine what is a Sunday newspaper by the day of the week which appears in the masthead, if that is what you call it, or [fol. 840] the banner, streamer?

The Witness: Well, certainly that would be one indication of whether it is a Sunday newspaper.

The Court: Do you object to the Court's question?

Mr. Kramer: No, Your Honor, I just wanted to explain something. It is my understanding that the New York Daily News is a Sunday paper, and it is sold as early as Tuesday.

The Court: Do they have editions which also carry news up to Sunday?

Mr. Kramer: Yes, sir, definitely.

By Mr. Kramer:

Q. Mr. Hurlbut, did you agree to sell newsprint for the Sunday Item at the time when the present owners of the Item advised you that they desired to print a Sunday edition and needed paper for it?

A. I must differentiate in that connection between International Paper Company and International Paper Sales Company. The Sales Company did make a contract, I believe, with the Item Company, earmarking a substantial tonnage of newsprint for their Sunday edition.

Q. Do you happen to remember now when that was, about?

A. I would say a month or two before the Sunday Item resumed.

Q. And your bills have been paid, have they?

A. With reasonable promptness, yes.

Mr. Kramer: No further questions.

[fol. 841] Cross-examination.

By Mr. Wilson:

Q. Mr. Hurlbut, if I understood you correctly, the International Paper Company reached the decision sometime early in 1941 that something had to be done about the Item, Ltd., which was the company at that time?

A. That is correct.

Q. Well, now, just what steps did you take to do something about that situation? In other words, what negotiations did you enter into with various people on that?

A. First, we had to make a tentative deal with Colonel Thompson. Then we had to arrange a First Mortgage of $500,000.00 with the Jefferson Standard Life Insurance Company, who specialized in newspaper mortgages. One of the provisions of that mortgage was that the new Item Company would discontinue its Sunday edition. We had to make arrangements with Mr. Claude Rives, representing some stockholders. I think that about covers it.

Q. Now, I take it, in connection with developing that, you also had to find new management to take over?

A. That is right.

Q. What did you do in the way of finding new management?

A. The first man that we approached was Mr. Manship of Baton Rouge, who had been an old customer of ours. He agreed that it was a good opportunity, he concurred in the wisdom of discontinuing the Sunday, but said at his age he didn't care to take on additional responsibilities. We then [fol. 842] approached Mr. Newhouse, who was then a customer of ours, very substantial and experienced publisher. He agreed with Mr. Manship, but as his operations were all near New York, he said that he didn't want to take on a responsibility so far away. I may say that subsequently he changed his mind and took on a Portland, Oregon, newspaper, but that was only about a year ago.

Q. And in connection with presenting this matter to all of the people who were interested whom you mentioned, namely, the Jefferson Standard people, Mr. Zemurray, Mr. Rives; it was made plain that your program included the discontinuance of the Sunday paper, was it not?

A. Plain beyond any question whatever.

Q. I believe that you also stated that you at one time asked Mr. Nicholson, Mr. Leonard Nicholson, if he was interested in purchasing the Item?

A. Right.

Q. And did I understand your testimony correctly that Mr. Nicholson said that he was not interested in the Item, in purchasing the Item, that he didn't want a monopoly?

The Court: At that point, let me ask you, was your Company willing to make the same sort of deal with Mr. Leonard Nicholson that was subsequently made with Mr. Ralph Nicholson?

The Witness: I don't think the discussions with Mr. Leonard Nicholson ever reached that stage as to detail, as to whether he would discontinue the Item as the new owner discontinued it.

[fol. 843] Q. Well, maybe you would give him ten years to pay for it?

A. It never reached that point. He never showed the slightest interest in it.

Q. From your experience with the Times-Picayune Publishing Company up to that point, it never occurred to you, had it, that Mr. Nicholson would need ten years to pay off a $400,000.00 loan?

A. No.

Q. Now, Mr. Hurlbut, as I understand, the arrangement that was finally made with Mr. Ralph Nicholson, the entire sum of money, that is, cash that was put up for the Common Stock which was turned over to Mr. Ralph Nicholson, was put up by the International Paper Company, is that correct?

A. Yes.

Q. And that was a sum of $400,000.00?

A. Yes.

Q. Which included $125,000.00 of indebtedness to International Paper Company?

A. The International Paper Company put $400,000.00 into the new company, and the new company then paid the International Paper Sales Company, the $125,000 or $150,000.00.

Q. And Mr. Nicholson was then given a period of ten years in which to pay off his indebtedness to the Company and take the stock, free of any claim on the part of International Paper Company?

A. Yes.

Q. Mr. Hurlbut, was the arrangement successful in so far [fol. 844] as Mr. Ralph Nicholson was concerned?

A. Shortly after Mr. Nicholson took charge, the company started to make money—I think it was in December of '41—and continuously thereafter made substantial sums of money.

Q. I believe the only payment that Mr. Nicholson was obligated to make were his payments out of earnings?

A. Right.

Q. When did Mr. Nicholson pay up his indebtedness to the International Paper Company?

A. In July, 1949.

Q. At that time, did he pay up the entire $400,000.00 including any interest that was still unpaid?

A. He paid it off in full, including interest in cash.

Q. There has been some reference here to an obligation on the part of Mr. Ralph Nicholson to discontinue the Sunday paper for a period of ten years, commencing the end of July, 1941. After the paper passed out of the hands of Mr. Ralph Nicholson, did a Sunday paper start up—I will change that—did the Item start up a Sunday paper?

A. Yes.

Q. Was that paper started at the beginning of March, 1950?

A. I don't know of my own knowledge. I am told that, yes.

Q. Well, I will ask you whether or not International Paper Company was requested to furnish additional tonnage to the Item Company for the purpose of printing a Sunday paper?

A. The Sales Company was so requested and complied [fol. 845] with the request.

Q. That is, you furnished the additional paper as required by the Item Company to print a Sunday paper?

A. Yes, right.

Q. At the time in 1941 when you were negotiating with the various people interested in the Item for the sale or for the transfer of the ownership of the Item, was there anyone connected in any way with the Times-Picayune Publishing Company involved in those negotiations?

A. Certainly not.

Q. Well, was there any interdependence or any relationship whatever between your negotiations that you were carrying on with the owners and management of the Item and the negotiations which you were also carrying on about that time with the Times-Picayune Publishing Company with respect to newsprint?

A. The reorganization of the Item had absolutely no connection with our negotiation with the Picayune for the newsprint contract. They were completely independent.

Q. Well, was there any suggestion in your negotiations with the various officials of the Times-Picayune Publishing Company that the discontinuance of the Sunday Item was in any way related to or had any bearing upon your obtaining newsprint contract with the Times-Picayune?

A. There was no hint of any such thing.

Q. Mr. Hurlbut, in considering the problems of the Item, Ltd., Company at the time that you determined that a re-[fol. 846] organization was necessary, did you go into their financial situation and their circulation situation to reach your conclusions?

A. I don't think they had a breakdown of their losses on their Sunday edition as distinct from their daily. I think it is considered normal that a healthy Sunday newspaper in circulation will greatly exceed the daily. One of the outstanding examples of that probably is the New York News with something over four million Sunday and a little over two million daily. In the case of the Item, in the last Winter and Spring of '41, the Sunday was declining, and I think the circulation was less than the daily Item.

Q. Mr. Hurlbut, I believe you told Mr. Kramer that at the moment the newsprint supply and demand were just about in balance. In the first place, I would like for you to tell me on what basis you figure your capacity of newsprint, that is, the mill capacity of newsprint.

A. The Canadian Association of Newsprint Manufacturers at the end of each year figures the capacity of the coming year, based on the best performance of the individual mill for the past year.

Q. And it frequently happens, does it not, that the production may be somewhat over the theoritical capacity thus used?

A. The Canadian industry has shown increased capacity in each of every one of the years since war time controls were abolished. Given sufficient business, they will run 101 to 102 and in some months, 103 per cent of its capacity based on the previous year's operation.

Q. Now, over the period of, say, the last two to three [fol. 847] years, hasn't there been times when the industry was operating at less than capacity?

A. In the late Fall of 1949 and the first four or five months of 1950, industry ran in the neighborhood of 98 per cent of capacity, and we ourselves, that is, our sales company, took on at that time a number of new customers because our old customers didn't require the available tonnage.

Q. Now, you made the statement that the situation has changed somewhat from what it was approximately a month ago. Isn't it true that from month to month or maybe from season to season of the year, the situation in newsprint will change radically, that is, there may be at one time supplies and at another time, it may be in short supplies? In other words, it isn't something that you can say simply because it is in balance today, it may not be completely out of balance one way or another in another two months?

A. I don't think anybody can predict it with any accuracy, because the consumption of newsprint is dependent, not only upon general business, but upon a number of other factors. Radio, for example, in the 30's hit it by taking a substantial portion of the advertising dollar.

[fol. 848] Q. Just one more question with respect to the situation prior to the time that International Paper Company decided to step in and see if it could make a healthy customer out of a sick customer in the Item situation:

Mr. Hurlbut, wasn't it fairly common knowledge throughout the industry that the Item had been on the block for sometime and had been offered for sale to others?

A. I think it was fairly common knowledge that at least two others had attempted to do what we succeeded in doing.

Q. And it was only as a last resort that your company decided to step in and take over and see what they could do?

A. It was very definitely a last resort. I can't recall any other instance of our company doing it.

Mr. Wilson: That is all.

Redirect examination.

By Mr. Kramer:

Q. You say that two others attempted to do what you succeeded in doing.

What did you succeed in doing? I just didn't understand what you meant.

A. We succeeded in reviving the Item, so that today there is an Item in New Orleans instead of there not being one.

Q. You weren't referring, of course, to your success in the nine-year suspension of the Sunday Item?

A. That was a very pertinent and important part of our [fol. 849] reorganization.

Q. Do you know the names of anybody else who attempted to get the Item to cease to publish a Sunday paper?

A. No.

The Court: Was it your objective to get them to cease to publish a Sunday paper, only? Or was the purpose of having them to do that to enable them to revive and pay you off?

The Witness: We thought it was a necessary step: to enable them to survive, one of three necessary steps, the other two being new management and sufficient working capital.

Mr. Kramer: That is all. Just a minute.

Nothing more.

Mr. Wilson: We have no further questions.

Mr. Kramer: That is all, Mr. Hurlbut.

Thank you very much.

(Witness excused.)

[fol. 850] Ralph Nicholson, a witness called by and on behalf of the Government, being first sworn, was examined and testified as follows:

Direct examination.

By Mr. Leonard:

Q. Will you state your name for the record, please?

A. Ralph Nicholson.

Q. How is "Nicholson" spelled, please?

A. N-i-c-h-o-l-s-o-n.

Q. What is your home address, please, Mr. Nicholson?

A. St. Petersburg, Florida.

Q. And the street address?

A. 630 Twentieth Avenue, Northeast.

Q. What is your occupation, please?

A. I am in the newspaper business. I am the publisher and editor and President of the St. Petersburg Independ-

ent. I am also Vice President and Co-owner of the Tampa, Florida, Daily Times.

Q. When did you enter the newspaper business, please, Mr. Nicholson?

A. I first started my connection with newspaper work in 1910 or 1911 as a carrier boy.

Q. For what paper?

A. For the Richmond, Indiana, Item.

Q. Will you tell us what other papers you have been associated with, please, sir?

[fol. 851] A. The Philadelphia Public Ledger; New York Evening Post; New York Telegram; New York Mirror; the New York Graphic; The Pittsburgh Press; The Japan Advertiser; The New Orleans Item; The Tampa Daily Times; St. Petersburg Independent.

Q. And you are a publisher at the present time?

A. Yes.

Q. Will you relate the circumstances, please, under which you became the publisher of the New Orleans Item?

A. In April, I believe it was, 1941, while in Tampa, I received a telephone call from Richard Doane, of the International Paper Company, asking if I were still interested in acquiring another newspaper. I answered in the affirmative, went to New York at his invitation, and had a meeting with him and some of his associates where we discussed the New Orleans Item. At that, and during the course of subsequent meetings, the program developed and I became the owner and publisher of The New Orleans Item.

Q. Can you tell us how the financing was arranged?

A. The basic financing was the five hundred thousand dollars advanced by the Jefferson Standard Life Insurance Company, in exchange for a first mortgage bond issue. Colonel Thompson, the principal owner, received a second mortgage bond issue in the amount of four hundred thousand dollars. I put four hundred thousand dollars in, in exchange for the common stock, which amounted to the purchase price of the common stock. I received the four hundred thousand dollars from the International Paper Company for that use, and endorsed the stock on the date of acquisition and gave it to the representative of the Paper [fol. 852] Company as collateral for the loan.

Q. Who acted for the International Paper Company?

A. Mr. Hurlbut: William N. Hurlbut was their principal representative.

Q. And did you receive a letter from the International Paper Company concerning the terms of the transaction?

A. Yes. I received a letter from Mr. Hurlbut, summarizing our agreement.

Q. Do you have a copy of that letter?

A. No.

Q. Do you recall what became of it?

A. Yes. I destroyed it along with many other papers and documents connected with my ownership of the Item, which served no useful purpose following my sale of the Item.

Q. Will you tell us what the provisions of the letter were, please?

A. The principal ones referred to the loan, and the period covered: ten years; and the requirement regarding the discontinuance of the Sunday New Orleans Item.

Q. Were there any other provisions in the letter?

A. None of consequence, that I recall.

Q. When did you learn for the first time of the proposed discontinuance of the Sunday Item, Mr. Nicholson?

A. I think that was at the April meeting, in 1941, that I attended in New York, at the offices of the International Paper Company.

[fol. 353] Q. And do you recall who was there?

A. Mr. Doane, Mr. Hurlbut, Mr. Wheatley, and I believe Mr. Howden, an attorney for the International Paper Company.

Q. The other gentlemen you have mentioned all represented International Paper Company?

A. Yes.

Q. There was no one else there that you remember?

A. No.

Q. How was the program explained to you by Mr. Hurlbut?

A. Their plan was described of acquiring the New Orleans Item and of making it available to me on the terms and the conditions that I just told you about. As I remember, it was all wrapped up in one package on that occasion.

and they said, in effect, "This is it; do you want it?" and I said I did.

Q. And you returned to your home?

A. Yes. I was living in Tampa then, and returned, I believe the following day.

Q. And you received the letter after you returned to Florida?

A. I think that was after the purchase was consummated, in June, 1941.

Q. But in your discussion, in New York, with Mr. Hurlbut, on the proposed discontinuance of the Sunday Item, did he explain to you that he was committed for that discontinuance?

A. No. I think he gave no indication of any commitment on that discontinuance.

[fol. 854] Q. Did he tell you why he thought the Sunday Item had to be discontinued?

A. He may have, but there wasn't much explanation. It was a matter of a formula that he had devised: a program that was largely crystalized, and this was it. Did I want it.

Q. Can you tell us whether or not you concurred in the decision to discontinue the Sunday Item?

A. I suppose that my saying, "Yes, I'll take it" could have been considered concurrence. It seems to me, however, that it more nearly approximates acquiescence.

Q. Would you have continued the publication of the Sunday Item had you not been bound by this stipulation with International Paper Company?

A. I would not have made, on my own, an advance decision to discontinue the Sunday Item, or to make any other substantial change, until I had personally an opportunity of looking into the situation, and subsequently I might have arrived at that same conclusion. I might have arrived at a different conclusion. It is impossible to say.

Q. As it was, you regarded this program as being set and you had taken it over from International Paper with the stipulation that the Sunday Item was to be discontinued for ten years, and as long as you were the publisher that was observed. Is that correct?

A. Yes.

Q. Do you recall whether that letter which Mr. Hurlbut

sent to you outlining the terms of the understanding mentioned that you were to have an option to purchase the stock of The Item Company?

[fol. 855] A. There was a reference in that letter to option, and it seemed to me that it wasn't as clearly stated that I was the actual owner of the stock and came into physical possession of it permanently on liquidating the loan, as that had been stated during our initial meeting.

Q. Let's see if I have this correct. The International Paper Company took the stock from you, the common stock of the new Item Company, and held it as pledgee against an advance of $400,000, which had been made to you.

A. Yes.

Q. But it was your understanding that upon the retirement of that loan at any time, the stock simply would be returned to you, free of the lien.

A. Yes; and that it was an outright purchase on my part with borrowed money, with no implication of an option.

Q. But you considered yourself as the owner of the stock, subject to the debt which you expected to repay from the earnings of the Item?

A. Yes.

Q. Do you recall whether or not you signed a promissory note for the amount of that advance?

A. I do recall I did not sign any note.

Q. You recall that you did not?

A. Yes.

Q. Your recollection on that is clear?

A. Clear and positive.

Q. Did you make any other evidence of this indebtedness [fol. 856] that you recall?

A. No. No written evidence of indebtedness, but it was clearly understood, though, between them and me.

Q. And it was specified in the letter which they sent you?

A. Yes, and the reply acknowledged the existence of it. When I said "no written evidence," I mean nothing that was in the way of a promissory note.

Q. You meant there was no written evidence, other than the exchange of correspondence?

A. That is right.

Q. And was the agreement between yourself and the In-

ternational Paper Company ever made in a formal contract?

A. No.

Q. When did you first learn, Mr. Nicholson, that there had been a ten-year contract negotiated for the purchase of newsprint by The Times-Picayune Publishing Company?

A. I don't recall.

Q. You took no part in any of that discussion?

A. No.

Q. Do you recall discussing the program of discontinuance of the Sunday Item with anyone except the officials of the International Paper Company that you have already mentioned?

A. No, but I must have told some of my associates at the Item about it.

Q. Did you ever discuss it with any of the officials of The [fol. 857] Times-Picayune Publishing Company?

A. No.

Q. Not even after the agreement was in effect?

A. Not to my knowledge.

Q. When did you receive your stock certificates in the new Item Company?

A. In June. I believe it was the 17th of 1941 when the transaction was consummated.

Q. And upon delivery of the certificates to you, did you endorse them and deliver them to Mr. Hurlbut of the International Paper Company?

A. Yes.

Q. And about that time they advanced the $400,000 to your credit in one of the New Orleans banks?

A. It was all a simultaneous transaction and they put up the money at that same meeting.

Q. And from the $400,000 advance, you retired the amount owed to the International Paper Sales Company, did you not?

A. That $400,000 went into the treasury of the new Item Company and it then paid off the debt of the former company which it had assumed, yes.

Q. Do you recall the amount of that payment to the International?

A. It was slightly in excess of $100,000, I believe.

Q. About $125,000?

[fol. 858] A. I think that would be accurate.

Q. When did you first meet Mr. Leonard Nicholson?

A. I don't remember. It was sometime prior to 1941.

Q. Did you have any discussions with him with regard to either the discontinuance of the Sunday Item or the purchase of newsprint by The Times-Picayune Publishing Company?

A. No.

Q. Can you tell us, Mr. Nicholson, of the amount of newsprint that the International Paper Company was supplying to the New Orleans Item prior to the time that you became the owner?

A. I don't remember that tonnage, no, but I think it was all they used.

Q. Their entire requirements contract?

A. That is my understanding.

Q. Did the new Item Company, under your management, obtain its supply of newsprint from International?

A. Yes, exclusively.

Q. And for how long a period of time was that true?

A. For so long as I owned the Item.

Q. Did you handle that on a year-to-year basis? Or did you have a long-term contract?

A. I believe the contract covered longer than a year. I don't remember how many years.

Q. But it was renewed, if it expired?

A. Yes.

[fol. 859] Is that correct?

A. Yes.

Mr. Kramer: If the Court please, may we suggest that Mr. Ralph Nicholson is an experienced newspaper publisher; and, since Your Honor was interested in the questions directed to Mr. Hurlbut concerning the Sunday paper, he might also have something to say about it.

We don't care to examine him, but if Your Honor does, we have no objection.

The Court: Proceed.

Mr. Kramer: No further questions.

Cross examination.

By Mr. Wilson:

Q. Mr. Nicholson, I understood you to say that at the time of the closing back in 1941 that you endorsed the stock over to the International Paper Company.

I take it that that was merely a blank endorsement on the stock, was it not?

A. Yes, sir.

Q. And when you referred to meetings in New York with Mr. Doane, Mr. Wheatly, Mr. Hurlbut and Mr. Howden, as representatives of the International Paper Company, you were making no distinction between the Paper Company, itself, and the Sales Company, were you?

A. That is correct.

Q. And if I correctly understood you, when you came to New York in April of 1941 at Mr. Doane's request and talked with Mr. Hurlbut and these other gentlemen, the [fol. 860] program for the New Orleans Item was packaged then? In other words, you were offered the package and were asked, "Are you interested"?

A. That is correct.

Q. And, included in that package at that time was the discontinuance of the Sunday Item?

A. Yes.

Q. You had done business for a number of years, had you not, with the International Paper Company in one capacity or another?

A. Yes.

Q. You knew these gentlemen, personally, that you were dealing with?

A. Yes.

Q. And I take it that you had considerable respect for their business judgment in the operation of a newspaper; that is, in their general dealings with newspapers? They weren't men that were inexperienced in that field, were they?

A. I would say——

The Court: Let him answer one question at a time.

A. I had a great deal of respect for their business judgment and I knew that they knew a good deal about the operation of newspapers.

By Mr. Wilson:

Q. Well, if I understood your own views on the subject, your own views were that you would not have reached the decisions that they had reached until you, personally, had had an opportunity to make a personal investigation of the [fol. 861] situation and weigh all the factors and determine in your own mind what would be best.

A. That is right, until I had had that opportunity.

Q. And what your decision would have been is another question, because the thing was offered to you as a package?

A. That is right.

Q. And in the course of these negotiations with the various officials of International Paper and others by which you became the publisher of the Item, were there any officials or anyone else who, to your knowledge, had any interest in The Times-Picayune Publishing Company involved in those negotiations?

A. No.

Q. Did you have any knowledge at that time that there were negotiations at the same time going on with The Times-Picayune Publishing Company in regard to newsprint?

A. No.

Q. And, if I understand you correctly, there was never any discussion that took place when you were present when there was anyone present from The Times-Picayune Publishing Company in regard to the discontinuance of the Sunday paper?

A. That is correct.

Q. You were aware, were you not, at the time that you went into the arrangement by which you took over the Item that the Item was in rather poor financial shape?

A. Yes.

[fol. 862] Q. And was badly in need of working capital?

A. Yes.

Q. As I understand it, one of the principal considera-

tions in working out the plan that was worked out was that, through your purchase of the common stock, there would become available what you believed to be an adequate quantity of working capital to put the paper on its feet?

A. Yes.

Q. Well now, following your taking over the Item, how did that work out from a financial standpoint?

A. Satisfactorily.

Q. Do you have with you, Mr. Nicholson, your records showing what your financial position was from year to year following that time?

A. All I have is a tear sheet from the Times-Picayune, which lists those figures.

Q. As given?

A. As given by me at the deposition here previously.

Q. Perhaps it would be better if I traded with you and handed you the deposition.

The Court: What is the purpose of this, if I may inquire?

Mr. Wilson: The purpose is to show that, although the financial situation was very bad immediately prior, that when he came in and they adopted the program which was offered by The Times-Picayune Publishing Company, it became very successful.

The Court: I understood you asked him what his [fol. 863] financial situation was.

Mr. Wilson: If I said "his," I meant they adopted the International Paper Company program and thereafter it did become quite successful.

The Court: You said "your financial situation". I think you meant The Item Company.

Mr. Wilson: I meant The Item Company, in which he owned all the common stock.

The Court: Very well.

By Mr. Wilson:

Q. Mr. Nicholson, what were the results of your operation during the first year? I believe your year ended June 30, 1942. I believe that is when you ended your first fiscal year, did you not?

A. Yes. According to this official-looking document,

which I assume is accurate, $13,586, net profit and after all charges, including interest and depreciation, but before Federal income taxes, for the twelve months ending June 30, 1942.

Q. What was your financial position for the twelve months ending June 30, 1943?

A. The operating profit calculated on the previously-described basis was $114,054.

Q. And would you give me the same figure for 1944?

A. For 1944, it was $345,144.

Q. And for 1945?

A. $284,846.

[fol. 864] Q. And for 1946?

A. $171,453.

Q. And for 1947?

A. $201,626.

Q. And for 1948?

A. $150,140.

Q. And for the year ending June 30, 1949?

A. $137,271.

Q. And I believe it was shortly after that that you sold your interest in the Item?

A. That is right.

Q. Am I correct that on July 14, 1949, you paid off your indebtedness to the International Paper Company and at the same time disposed of your stock?

A. Yes.

Q. Would you tell me what you received for your interest in The Item Company?

A. I sold the common stock for $1 million, of which I received $900,000 in cash and $100,000 in a note.

Q. But out of the $900,000 in cash, you paid off $400,000 to International Paper Company?

A. Yes.

Q. Leaving a net profit of $600,000?

A. Yes.

The Court: Do I understand no payments were made on [fol. 865] account of the stock over a period of the nine years during which you held it?

The Witness: That is correct. Eight.

The Court: Eight years?
The Witness: Eight.

By Mr. Wilson:

Q. Mr. Nicholson, just to keep the record straight: You are no relation to Mr. Leonard Nicholson, are you?
A. That is correct. I am not.
Q. When you determined that you were prepared to sell your interests in The Item Company sometime prior to July, 1949, did you offer The Item Company to Mr. Leonard Nicholson of The Times-Picayune Publishing Company?
A. Yes.
Q. There was, I believe, involved in the purchase price by the present owners of the Item a note of $100,000. That has been entirely retired?
A. No.
Q. When the offer was made to Mr. Nicholson or when Mr. Nicholson was offered the opportunity of purchasing the Item, what was his reply?
A. He said he didn't want it. It would be too monopolistic.

Mr. Wilson: That is all.

Redirect examination.

By Mr. Leonard:

[fol. 866] Q. Mr. Nicholson, at the time you decided to sell The Item Company to the Stern interests, did you inform Mr. David Stern of the existence of this stipulation for the discontinuance of the Sunday Item for a period of ten years?
A. Yes.
Q. And did you explain to him how that stipulation had been written into your original contract?
A. I explained to him that that was a hard-and-fast commitment that was part of the arrangement under which I purchased the Item.
Q. Inserted by the International Paper Company?
A. Yes.

Mr. Leonard: No further questions, Your Honor.

Mr. Wilson: Thank you very much.

Mr. Leonard: Thank you for your testimony, Mr. Nicholson.

(Witness excused.)

Mr. Kramer: If the Court please, yesterday evening, we gave the Defendants notice that we had proposed to offer certain contracts relating to their wire service and their features in evidence and a document obtained from the Times-Picayune in the form of a letter to Mr. Rashid written before this case was filed.

They suggested that, instead of offering the document without someone on the stand, they would prefer that we call Mr. Healy, I believe it is, to the stand; consequently, [fols. 867-937] the Government plans to call Mr. Healy tomorrow.

At this time, we are going into our testimony concerning the news boys or news dealers.

The Court: All right. The news vendors?

Mr. Kramer: News vendors.

The Court: Proceed.

[fol. 938] PROCEEDINGS OF MAY 8, 1951

(The trial was resumed, pursuant to adjournment, on Tuesday, May 8, 1951 at 10:00 o'clock, a. m.)

Mr. Kramer: Mr. Healy, please.

GEORGE W. HEALY, JR., a witness called by and on behalf of the Government, being first sworn, was examined and testified as follows:

Direct examination.

By Mr. Kramer:

Q. Please state and spell your name.
A. George W. Healy, H-e-a-l-y, Jr.
Q. Where do you live, Mr. Healy?
A. 2110 State Street.
Q. New Orleans?

A. That is right, sir.

Q. And what is your occupation?

A. I am managing editor of the Times-Picayune and the Times-Picayune New Orleans States and a vice president of The Times-Picayune Publishing Company.

Q. Are you a director?

A. Yes, sir.

Mr. Kramer: I called this witness, Your Honor, pursuant to the provisions of Rule 43(b).

The Court: All right.

By Mr. Kramer:

Q. How long have you been editor of the Times-Picayune?

A. I have been managing editor since, either late 1935 or early 1936, I believe. I am not positive.

[fol. 939] Q. Are you also the editor of the States?

A. No, sir. I am not.

Q. When is the first edition, that is, the earliest edition, that comes out of The Times-Picayune Publishing Company's Sunday paper printed?

A. Three p. m. on Saturday afternoon.

Q. Would it refresh your recollection if I reminded you of the pre-date issue you get out?

A. Well, we don't get out a pre-date any more. We formerly did at one time.

Q. When did you drop the pre-date issue?

A. I would say eight or nine months ago.

Q. Eight or nine months ago?

A. Yes.

Q. When you were getting out a pre-date issue, when did that go to press?

A. Friday night. It went to press at different times. At one time, we sent the pre-date to press on Wednesday evening and another time on Friday evening. We were experimenting with if.

Q. And where did you sell that? In what territory did you sell that paper?

A. At distant places.

Q. In the state? Or out of the State? Or both?

A. In the state and some in Louisiana and Mississippi.

Q. Now, calling your attention to the present time, will [fol. 940] you go over again for me when your first edition of your Sunday paper is published?

A. At 1:00 p. m. Saturday.

Q. And when is the last edition of the Sunday paper printed?

A. Twenty minutes to one in the morning, on Sunday morning.

Q. Now, does the States have a different managing editor than that of the Times-Picayune?

A. Yes.

Q. And does it have a different city editor?

A. Yes, sir.

Q. And does it have different reporters?

A. No, sir, not entirely.

Q. Does it have any different reporters?

A. Yes, sir. It has some different reporters.

Q. Are you in a position to tell us how many?

A. Well, I can tell you that the man who covers the Civil Courts Building for the Times-Picayune also covers for the New Orleans States. The man who covers the West Bank of the River covers for both publications, both editions. The man who writes the sugar and coffee markets writes for both editions. There are a good many overlaps of that kind.

Q. Are you able to say whether or not there are more reporters that work exclusively for the New Orleans States than there are who share work for the States and the Picayune?

A. The question is: Are there more who work exclusively [fol. 941] for the New Orleans States than who do work for the Times-Picayune New Orleans——

Q. New Orleans States, together, both?

A. I think there are more, yes, sir.

[fol. 942] Q. Do you have different editorial writers for the States than you have for the Picayune?

A. That is right, Sir.

Q. Are you qualified to tell us—note the question, please, carefully—are you qualified to tell us whether the editorial policy of the Times-Picayune varies in any respect from the editorial policy of the States?

A. The overall editorial policy for both newspapers is established by the President of the Times-Picayune Publishing Company.

Q. No, my question is, are you able to tell us whether or not the editorial policy of the States and the editorial policy of the Times-Picayune are different, sometimes identical, and sometimes different?

A. Well, it is identical at the top level. I mean one man establishes the editorial policy for both editions. Over and above that, when some problem of great moment comes up, we all sit around the table and discuss that problem and determine what should be the policy.

Q. Well, do you have the same editorials in both papers or different editorials?

A. Different editorials.

Q. Now, is it your position that the editorials published in the States say the same thing as those published in the Times-Picayune in different words?

A. Well, the States supports the same major movement, the same major political activities, and the same candidates.

Q. Now, are you prepared to state the reasons why you [fol. 943] have different editorials in the States and in the Times-Picayune in view of the fact that your policy is the same?

A. Well, we have two editions that have two editorial pages, and the men who write the editorials for the one or the other are assigned, as a rule, to fill that space in that page. There have been times when an editorial written by someone assigned to the Times-Picayune side has a bid in the States.

Q. But those are unusual cases, are they not?

A. They don't happen very often, no, sir.

Q. I would like to go back to the next to the last question I asked you, and please listen carefully, because I don't think you answered it, Mr. Healy. Will you read the question?

(Question read by reporter.)

A. I would say for the same reasons that we have different news in the two editions.

Q. Exactly. Now, will you tell me what those reasons are?

A. Well, it might be that there is a development at 10:00 o'clock in the morning that would require editorial comment in the afternoon edition. We've got editorial writers that come down reasonably early in the day to do the job for the afternoon edition. They might have a fresh subject. On the other hand, there may be a story that breaks at 4:30 or 5:00 in the afternoon that would require some editorial comment, and the gentlemen that are assigned to the Times-Picayune's editorial page would be able to get the President's speech or whatever this new development might be and work on it in a different time cycle.

[fol. 944] Q. Now, all of your editorials in both papers relate to events which occurred within the twelve hours preceding their publication?

A. Not entirely. Sometimes they relate to events that occurred twenty-four hours before.

Q. By the way, do you carry the same editorials—cartoons in the Times-Picayune that you do in the New Orleans States?

A. No, sir.

Q. It is a different cartoon?

A. Yes, sir, different cartoonist.

Q. Mr. Healy, do you know about the surveys that the Times-Picayune Publishing Company has made of the Readers of the Times-Picayune as compared with those of the New Orleans States?

A. We haven't made any in recent months.

Q. That wasn't my question. Do you know about any you have ever made, Mr. Healy?

A. Well, I knew about a survey that was made of the morning edition by the Advertising Research Foundation, and I know of a survey which I had made of comic strips in the morning edition by a group of students that I employed at Tulane University.

Q. How about Ernst & Ernst surveys, do you remember them?

A. I think the Ernst & Ernst survey was on the business side. I have only a vague knowledge of that survey.

[fol. 945] Q. You haven't enough of a recollection now to remember about when that survey was made?

A. Ernst & Ernst, as I recall it, made a check to deter-

mine how much duplication there was in circulation between the two editions.

Q. Do you remember about when it was?

A. I would have to refresh my memory on that, Sir. I would say it was approximately ten years ago.

Q. Do you ever permit your respective news departments, that is, for the New Orleans States and the Times-Picayune, to engage in friendly rivalry to see who breaks first with the news?

A. Occasionally, but only very rarely.

Q. You do sometimes permit that?

A. On very rare occasions when we know that the opposition is not in on the story. The rule is the other way around. When someone on the Times-Picayune staff knows of a news development that the States City Editor might not know about, they telephone the States City Editor and tell him about it.

Q. What about the physical appearance of the two papers, that is, the Times-Picayune and the New Orleans States, would you say that they are very similar or——

A. The Times-Picayune is using the same headline type that it was using more than twenty-five years ago.

Q. Whereas the States is more modern?

A. The States has a type which is similar to the type which it had when the States was purchased by the Times-[fol. 946] Picayune Publishing Company, but it is a refined headline type.

Q. Now, let me see if I understand. The States used to be, prior to 1933, an independently owned paper?

A. That is right.

Q. And you kept on with its peculiar, its own style of type?

A. In appearance, but it has been refined, Sir.

Q. Are you familiar with the term "all day newspaper"?

A. Yes, sir.

Q. Have you ever considered publishing an "all day" newspaper?

A. Well, I think we do.

Q. You do?

A. Yes, sir.

Q. Are you familiar in a general way with the Audit Bureau of Circulation?

A. Yes.

Q. I ask you if you will please hold this document in your hand, which is titled "By-Laws and Rules of the Audit Bureau of Circulation," while I read two paragraphs from it, and please tell me if I read them accurately.

A. Yes, sir.

Q. "Chapter C. Sub-Section II. Sub-Paragraph (a). Newspapers of daily frequency shall be designated in Bureau reports as morning, evening, or all day. The selection of the designation to be used shall be the sole prerogative [fol. 947] of the publisher except as provided under Paragraphs (f) and (g) of this Rule."

Did I read that correctly?

A. You did read it correctly.

Q. "Sub-Paragraph (f). For a newspaper to qualify for the designation 'all day' there must be no difference in editions which would enable anyone to distinguish between them being the editions of a morning or an evening paper (save by the insertion of later news).

"The use of terms in the 'ears' or elsewhere, of any editions, which imply 'morning' or 'evening' or the use of marked changes in the format, typography, or any other distinguishing characteristics whatsoever which are not common to all editions shall disqualify the paper for the use of the 'all day' designation."

Now, my first question to you, Mr. Healy, is does the Times-Picayune Publishing Company publish a newspaper which qualifies under the A. B. C. reports as an all day paper?

A. Not under that arbitrary rule.

The Court: What is this?

Mr. Kramer: These are the by-laws of the Audit Bureau of Circulation.

A. (Continued) I would like to explain that our Sunday paper couldn't qualify under that rule because we change the ears in the Sunday paper and in the edition that we

put on the streets at 3:00 o'clock in — afternoon, which says, [fol. 948] "First for the Southwest", intended to put the reader or the purchaser on notice as to what edition that is.

Q. You had better first stop and tell us what "ear" means.

A. On the other side of the masthead of most newspapers is a space that normally is filled with type. Some papers push the masthead all the way over to flush left or flush right and don't use the ear, but the one for the masthead is centered in the space on either side of the mast for express purposes. Now in the final edition of the Times-Picayune, we have an index in our left ear; in our right ear, we have what we call "The Weather", which is a summary of the day's weather reports. On the other hand, in our first edition of the Sunday paper, we don't have that in that index. We have this ear that says "First for the Southwest".

Q. Now, I think I interrupted you once because you started to talk about ears and no one here knew what that meant. Did you want to go on?

A. No, sir, I just wanted to explain that we use different ears on different editions of the paper.

Q. Now, you characterize the by-laws of the Audit Bureau of Circulations' classification as arbitrary, and I would like to pursue that with you if I may for a moment.

Do you regard the regulations of the Associated Press as arbitrary?

A. They are fixed by a Board of Directors on the basis of arbitrary time cycles and——

[fol. 949] Q. You knew, of course, that the Associated Press has two contracts with you, one for the Times-Picayune morning and Sunday and the other for the New Orleans States afternoon?

A. I believe that is correct, yes, sir. We have what the Associated Press calls different memberships or two memberships.

Q. You say they are different memberships?

A. I think that we already had our morning membership prior to 1933, and when the New Orleans States was purchased, one of the items in the purchase was the afternoon membership.

Q. And you have just kept it on through the years, is that it, or did you have to renew it?

A. I frankly don't know, Sir.

Q. Have you ever seen the report that you file with the Audit Bureau of Circulations, to the best of your recollection?

A. I don't believe I have. I have read the Publisher's statement that we file with the Post Office Department.

Q. Well, if you have never seen it, I will not show it to you. I hand you Government Exhibits 112 and 113 for identification and ask you, Mr. Healy, to tell me what those are.

A. Exhibit "G-112" is an afternoon membership—a certificate of afternoon membership in the Associated Press.

The Court: What is the date of that?

A. That agreement is dated April 15, 1948.

Q. 1948, did you say?

A. That is what it looks like, yes. It is a little bit blurred [fol. 950] on here. "G-113" is a certificate of morning membership in the Associated Press, dated April 15—it looks like 198 here, but it is probably 1948.

Q. Yes, 1948 I think it is. I would like to read only a very small part of it:

"Agreement made at New York between the Associated Press, the New York Membership Corporation, with offices at 50 Rockefeller Place, New York 20, New York, hereinafter called the Associated Press, and the Times-Picayune Publishing Company of New Orleans, Louisiana, hereinafter called the Member. (1) The parties agree that during the term of this agreement, the Associated Press will furnish to the Member, barring conditions beyond the control of the Associated Press, and the Member shall publish six days a week, not earlier than 9:00 a.m. and not later than 7:00 p.m. local time in the city of publication, a leased wire news service of the Associated Press, in whole or in part, in the afternoon newspaper known as 'New Orleans States' owned by the Member and published at New Orleans, Louisiana, upon the terms and conditions hereinafter set forth."

"G-113" reads in part—reads the same way in the part that I read except that it says:

"Shall publish seven days a week, not earlier than [fol. 951] 7:00 p.m. and not later than 9:00 a.m., local time, in the city of publication, a leased wire news service of the Association Press, in whole or in part, in the morning and Sunday newspaper known as the Times-Picayune, and the Times-Picayune-New Orleans States."

Incidentally, Mr. Healy, do you know how this news comes to your building over here?

A. Most of it comes over teletype printers, over the teletype wire.

Q. That news originates from all over the world and is transmitted in to you?

A. All over the world, that is right.

Q. Now, do you happen to know about your contract with the International News Service Division of the Hearst Corporation, do you know how they treat this problem?

A. They used to have two separate services known as Universal Service and International News Service. I think today it is all a twenty-four hour International News Service proposition.

Q. I hand you Government Exhibit 114 for identification, and ask you to tell me, if you can, what that is.

A. It is a contract entered into by the Times-Picayune Publishing Company with International News Service Division of the Hearst Corporation for wire service for use in the Times-Picayune and the New Orleans States.

Q. I am going to read part of this in the record. I would [fol. 952] like you to follow me and make sure I get it right:

"Agreement made this sixth day of August, 1949, at New York, New York, between International News Service, Division of the Hearst Corporation, hereinafter referred to as International News Service——"

And then there is typed in "The Times-Picayune Publishing Company——

"the owner and publisher of the newspaper——"

And then after the word "paper", do you see an "S" typed in there, or something that looks like an "S"?

A. Yes, there is something that is either typed in or inked in.

Q. "Newspapers, hereinafter called the Publisher, witnesseth: that for and in consideration of the sum of one dollar by each to the other in hand paid, the receipt thereof is hereby acknowledged, and of the mutual covenants hereinafter contained, the parties hereto have agreed: (1) International News Service hereby grants to the Publisher the rights and license of publishing in the——"

And the rest is typed in——

"The Times-Picayune and New Orleans States, New Orleans, Louisiana, a newspaper——".

Now is that an "S" typed in there? I see none in my copy.

A. No, sir, there is not.

[fol. 953] Q. "Printed in the English language at New Orleans, Louisiana, its news report as hereafter described, to-wit: regular day wire, daily except Sunday, and regular night wire, seven nights per week."

Mr. Kramer: I think I have failed to offer Government Exhibits 112, 113 and 114 in evidence, if the Court please.

The Court: They will be admitted.

(Documents marked "G-112", "G-113" and "G-114" for identification, were received in evidence.)

Q. Let me ask you now, Mr. Healy, about feature syndicate contracts. The first question I want to ask you about pertains to the newspaper business, just what is a feature syndicate company?

A. A feature syndicate company is an organization which contracts with artists or writers for the creation of comic strips or columns or other material suitable for newspaper publication, and then, in turn, sells those columns to a great many newspapers.

[fol. 954] By Mr. Kramer:

Q. Now, can you describe to the best of your knowledge the mechanical way in which they get the material to you which you print in your paper?

A. Well, the artist sends the drawings to the home office of the syndicate. In turn, they make cuts and send mats to the respective newspapers for reproduction in the papers. The columnist just writes his column and he might telegraph it or might send it by airmail to the home office, and they, in turn, deliver that written material to the newspaper, either by mail or by telegraph.

Q. To the best of your knowledge, do substantially all of your feature syndicate contracts call for the transmission from some state other than Louisiana to Louisiana of the material?

A. Not all of them.

Q. Most of them?

A. Most of them.

Q. That's good enough.

Now, it is a fact, is it not, that your feature syndicate contracts specify whether the feature is to be used in the Times-Picayune or in the New Orleans States or in the Sunday paper, or in any two or any three of those?

A. Not altogether. Some of them just provide that they will furnish us certain features and we can use them any time we want to.

Q. Some do and some do not. Is that what it comes down to?

A. That's right.

[fol. 955] Q. Now, let's talk about those that do. I hand you Government's Exhibits 115 through 123, inclusively, and without identifying each one of them, tell me generally what those documents are.

The Court: Accept an interruption at this point. We will take a short recess.

(Short recess.)

(The Reporter read the last question.)

A. Exhibit "G-115" is a contract with the Chicago Times Syndicate, Inc., for the feature, "Grin and Bear It," for use in the New Orleans States.

Q. Now, stop right there a minute, Mr. Healy. Do you notice that that, or have you ever noticed, that that contract has a paragraph called "Fifth," and that that paragraph reads:

"The publisher shall not furnish or permit to be furnished to any other person any feature or service herein contracted for and shall continuously use such feature or service exclusively in the above-named newspaper."

My question is, had you ever noticed that, or are you aware of that fact?

A. I am aware of that clause in the printed form, and I might also add that we also use that clause in the feature contract in the States.

Q. Do you also use it in the daily morning?

A. No, sir; we don't.

Q. All right. Go on with the "G-116."

A. Exhibit "G-116" is an Agreement with N. E. A. Fea-
[fol. 956] ture Service for the use of material furnished by N. E. A. Feature Service in the New Orleans States.

Q. Do you have a similar contract for either the Sunday paper or the morning Times-Picayune, or both?

A. No, sir; we don't. We don't have a similar contract for this same material, but we do use this material in the morning paper.

Q. Now, will you notice——

The Court: Let me understand that. This contract covers the right to publish in the States.

A. That is right, sir.

The Court: But you use some of it in both papers?

A. Yes, sir. We have an understanding with the N. E. A. that we can use it in both papers.

By Mr. Kramer:

Q. You have an understanding. Do you know whether that is written or oral?

A. It is oral, sir.

Q. Do you know when it was made?

A. It is made every time when a new contract is signed. We say, "We understand we can use this in the Times-Picayune or the States as we see fit."

Q. How about "G-117?"

A. "G-117" is a service contract entered into with United Features Syndicate for the Casey Ruggles adventure strip for use in the New Orleans States.

[fol. 957] Q. By they way, I notice that that contract is signed for the Times-Picayune Publishing Company by William K. Fitzpatrick. Who is he?

A. He is the Editor of the New Orleans States and a Vice President and Director of The Times-Picayune Publishing Company.

Q. Now, look at "G-118."

A. "G-118" is a contract with United Features Syndicate for publication in the New Orleans States of Elizabeth Woodward's column.

Q. Does that appear in the Times-Picayune morning?

A. No, sir, it does not.

Q. How about "G-119?"

A. "G-119" is a contract with United Features Syndicate for publication in the New Orleans States of the "Li'l Abner" comic strip.

Q. Does that appear in the Times-Picayune morning?

A. The strip does not. The Sunday page does.

Q. I mean the daily strip.

A. The daily strip does not; no, sir.

Q. How about "G-120?" What is that?

A. "G-120" is a contract between United Features Syndicate and The Times-Picayune Publishing Company for publication in the Times-Picayune of the Ella Cinders daily strip and the Ella Cinders and Nancy Sunday pages.

Q. Yes. Now, does the Ella Cinders daily strip appear in the New Orleans States?

A. It does not.

[fol. 958] Q. And what is "G-121?"

A. "G-121" is a service contract between United Features Syndicate and The Times-Picayune Publishing Company for publication in the New Orleans States of the Nancy strip.

Q. That is a comic strip?

A. Yes, sir.

Q. Does that appear in the Times-Picayune, morning?

A. No, sir; it does not.

Q. And what is "G-122," please?

A. "G-122" is a contract between the Hearst Corporation and The Times-Picayune Publishing Company for publication by the New Orleans States of Walter Winchell's column.

Q. Do you publish that in the Times-Picayune morning?

A. No, sir; only Sunday.

Q. How about "G-123?" What is that, please?

A. "G-123" is an agreement between the Register and Tribune Syndicate and the Times-Picayune Publishing Company for publication in the Times-Picayune of the wire report of the Chicago Daily News, Foreign Service.

Q. Do you use that in the New Orleans States.

A. Occasionally; yes, sir.

Q. Do you have any recollection of whether that appeared a hundred times or ten times in the last year?

A. No, sir; I couldn't give you the exact number. When C. D. N. comes in with a very good story that the States [fol. 959] thinks is spot they will grab it and use it.

Mr. Kramer: I offer in evidence Government's Exhibits 115 through 123, inclusive, being those he has just identified.

The Court: They will be admitted.

(The documents marked "G-115-123", inclusive, for identification were received in evidence.)

By Mr. Kramer:

Q. Now I hand you Government Exhibit 124 for identification, and I will ask you to tell me what that is.

A. Exhibit "G-124" is a memorandum which I wrote to

Mr. Rashid at his request after he asked me to account for features that were not covered by the formal contracts that we made available to him and the other gentlemen who called on us at the office.

Q. Do you remember now, Mr. Healy, whether that was before or after this law suit was filed?

A. It was May 3rd, 1950. I know exactly what date it was. I don't know what date the law suit was filed.

Q. It was before, the record shows.

A. The circumstances under which this was written——

Q. I will give you a chance to answer that if you will let me ask one question. In Government's Exhibit 124, did you list separately, at that time, the features that the Times-Picayune is receiving, commencing on page one of the memorandum and then again commencing on page four of the memorandum? Did you list the features that the New Orleans States is receiving on short term agreements?

A. Yes, sir, except that there is an overlap in both cases. [fol. 960] Q. Right. Now, I interrupted you because I wanted you to answer that question first. Will you please go ahead and say whatever you wanted to?

A. I notice that we have the Cotton News Bureau Report listed among the services the Times-Picayune receives. That service is available to the New Orleans States as well as the Times-Picayune.

The Dickinson Filler Service is listed here as a Times-Picayune feature but those fillers are also available in the composing room to the New Orleans States. The same applies to Handy Filler Service.

I believe that about covers the overlap.

Q. That covers the overlap on Government Exhibit 124?

Q. Yes, sir.

Q. In all other respects, does it give a correct picture of the subject matter which it purports to cover?

A. It gives a correct picture as that picture existed on May 3.

Q. May 3, 1950.

The Court: Just a minute. Doesn't this list which purports to be the material being received by the Times-Picayune include the Times-Picayune-States Sunday edition?

Mr. Kramer: The Sunday.

A. Yes, sir; it does.

Mr. Kramer: Oh, yes.
The Court: I see.

Q. During the recess, Mr. Healy, I took the trouble of [fol. 961] going back to the Reporters' office to get your testimony on one point. I either misunderstood or was misinformed about it.

You said, as the Reporter read it to me, "We've got editorial writers that come down reasonably early in the day to do the job for the afternoon edition."

Now, do you remember having said that?

A. Yes, sir; that is correct. The New Orleans States editorial writers report for duty before the Times-Picayune editorial writers do.

Q. Now, when does the first edition of the New Orleans States go to press?

A. In the neighborhood of 9:30. I mean, I wouldn't be positive about that.

Q. So that you are talking about editorials for the following day?

A. No, sir. If there is any big news break, Mr. Fitzpatrick or Mr. Corbin, or one of the other editorial writers, will have an editorial in that 9:30 edition of the States.

Q. I see. Would you estimate for us the number of editorials that are published in the New Orleans States that are written on the same calendar day that they are published?

A. Well, any estimate I would give you would be a guess, because the States' editorial writers are across the room from where I am.

Q. It is less than ten per cent, isn't it?

A. There would be better authorities in the building than I to answer that question.

Q. You tell me. You are an officer and a Director.

[fol. 962] A. Yes, sir.

Q. You are not a defendant.

A. (Laughs)

The Court: What is the significance of that? We are now talking about States editorial writers who write editorials for the States.

Mr. Kramer: That is correct, Your Honor.

The Court: What difference does it make whether they write them the same day or a week ahead of time? What is the purpose of it? I have missed the point if there is a point.

Mr. Kramer: I hesitate to state what I am about to state.

The Court: Go ahead. Question the witness, then. Go ahead with your examination.

A. You are apparently under a misapprehension. Quite frequently an editorial that appears in the first edition of either the Times-Picayune or the New Orleans States may not appear in the City edition. If there is a development that comes along that is more important than that particular one, we frequently eliminate that early editorial and substitute a fresher editorial for it.

Q. And you think that happens frequently?

A. Yes, sir; it does.

Q. Now, does that same editorial that you have been describing—I think I now grasp Your Honor's point, as I so often do when it is a little late to do it—Is that editorial you are speaking about the same editorial that is published in [fol. 963] The Times-Picayune?

A. No, sir; it is not.

Mr. Kramer: I offer in evidence Government Exhibit 124.

The Court: Let it be admitted.

(The document marked "G-124" for identification was received in evidence.)

Mr. Kramer: You may cross examine the witness.

Cross examination.

By Mr. Phelps:

Q. Mr. Healy, when is the Times-Picayune-New Orleans States delivered into the homes of subscribers within the City of New Orleans?

A. Between three a.m. and six a.m. in the morning: Sunday morning.

Q. Sunday morning?

A. Yes, sir.

Q. As I understand it, Mr. Healy the body type used in all editions of the Times-Picayune Publishing Company, morning, evening and Sunday is eight point on a nine point slug. Is that correct?

A. That is correct, sir.

Q. There is some difference in the banner and in the headlines?

A. And there also is some difference as between what we call tabular matter. The market tables, for instance, and the box scores are set in smaller type than eight point; and they just run all the way through in both editions.

[fol. 964] Q. So that there is a substantial amount of printed material which is interchangeable?

A. Definitely.

Q. From one edition to the other?

A. Yes, sir.

Q. Mr. Healy, Mr. Kramer has read to you from the By-Laws and Rules of the Audit Bureau of Circulation. I would like to read to you from Section 3 of Chapter C, article 1, and I ask you if I am reading correctly that portion of the By-Laws:

"Section 3. National Advertising Sold as a Unit in Morning and Evening Editions. When national advertising is sold exclusively as a unit in editions designated by the publisher as morning and evening editions of a daily paper, whether these editions are published under one or different names, publishers statements shall be rendered covering both editions. These statements may be issued separately or combined. If combined the total circulation of the two editions shall be set up in the first column, the circulation of the morning edition in the second column, and the circulation of the evening edition in the third column."

A. You read it accurately, sir.

Q. Are you familiar with the manner in which the fees or dues for A. P. franchises are computed?

A. Yes, sir.

[fol. 965] Q. It is on an allocation basis, isn't it?

A. It is prorated on the basis of what the service costs and what the field or the area that the newspapers serve population is.

Q. What I have in mind is this: Isn't the fee computed as on the basis of whether a paper or edition is the sole one in an afternoon or in a morning field?

A. Yes, sir. Yes, sir. The Times-Picayune in the morning has to pay a fee for its morning membership, approximately twice as much as the Times-Picayune Publishing Company has to pay for the afternoon membership of the New Orleans States. That is a rough guess.

Q. In other words, the States membership would be dependent on whether there was some other afternoon paper subscribing to Associated Press in New Orleans?

A. That is right, sir.

Q. Mr. Healy, you were questioned about having different editorials morning and evening. As a matter of fact, you have different editorials on Thursday from the ones you have on Wednesday, don't you?

A. That is right; yes, sir. And, as I pointed out, we sometimes have different editorials in the City editions than the ones we have in the first edition.

Q. Generally speaking, is it correct to say that the comic features you have in the evening editions are continued in the Sunday paper?

A. Yes, sir; in the Sunday paper I believe we have one more feature that is continued from the afternoon edition than we do continued from the morning edition.

[fol. 966] Q. You were asked about the cartoonists: Am I correct in my understanding that the cartoonist for the evening edition also serves as cartoonist for the Sunday editions?

A. Both cartoonists serve for the morning and the Sunday editions: Keith Temple and John Chase.

Q. Mr. Healy, I show you Government Exhibit 93. I am going to ask you if I read correctly the press times of the Times-Picayune morning edition for Tuesday, September 19, 1950:

"First edition press time, 6:36 p. m. Second edition press time, 9:27 p. m. Third edition press time 10:55 p. m.

Fourth edition press time, 11:13 p. m. Fifth edition, press time, 12:31 a. m."

Did I read that right?

A. You read those correctly, sir.

Q. Referring to the same exhibit, I would like to read the press times for the Sunday issue, September 17, 1950, and I ask you if I am reading these correctly:

"First edition, press time, 3:30 p. m. Second edition, press time, 4:17 p. m. Third edition, press time, 7:25 p. m. Fourth edition, press time, 9:30 p. m. Fifth edition, press time, 9:51 p. m. Sixth edition, press time, 10:52 p. m. Seventh edition, press time, 11:22 p. m. Eighth edition, press time, 12:43 a. m. Pre-date press time, 1:00 p. m."

Did I read those correctly?

[fol. 967] A. You did, sir.

Mr. Kramer: I think it is quite misleading unless you indicate what date the "pre-date" is.

By Mr. Phelps:

Q. Would you tell us, if you know, what day of the week the pre-date therein referred to has reference to?

A. It refers to a pre-date—(examining document)—we change these editions quite frequently. I am trying to——

Q. If you don't recall simply say that you don't.

A. I frankly don't recall; no, sir.

[fol. 968] Q. Referring to Government Exhibit 94, I show you that portion dealing with the press times of the Evening States, and I ask you if I am reading correctly from that exhibit:

"First edition, 8:50 a. m.——"

This is for September, 1950——

"second edition, press time, 9:55 a. m.; third edition, press time, 11:43 a. m.; fourth edition, press time, 12:08 p. m.; fifth edition, press time, 1:44 p. m.; sixth edition, press time, 3:37 p. m."

Did I read those correctly?

A. You did, Sir.

Q. Mr. Healy, in Government Exhibit 124, you furnished Mr. Rashid with a list of news features being received by the Times-Picayune and the States. Could you tell us whether or not there are a substantial number of such features not covered by that exhibit?

A. Yes, sir. The largest is not on a T. F. basis. The largest feature contract which we have is with King Features Syndicate, and I think that the second largest contract which we have, I believe, is with McNaught.

Q. Are there any other syndicates furnishing similar services not under contract to the Times-Picayune Publishing Company?

A. At the moment, I don't recall them. Incidentally, at this moment, there are several syndicates that are furnishing features that replaced one that we were using on May the third, which we no longer use. For instance, at that date, we were using a comic strip called "Alfred" from [fol. 969] McClure Syndicates. Well, when we took that strip out, we put another strip in called "Buckaroo", which we get from Arthur Lefaube Syndicate, also on a T. F. basis.

Q. As I understand it, you do not use all of the features offered by King Features.

A. You mean does the Times-Picayune use them all?

Q. That is correct.

A. No, sir, we do not.

Q. In other words, there are a substantial number of other features available to anyone else who would want them, aren't there?

A. Hundreds of them.

Mr. Phelps: Will the Government stipulate that there are a sufficient number of news features, comic features, and other features, so that the Item or any other company would have no difficulty in that regard, publishing a morning paper or a morning edition?

Mr. Kramer: Our answer is that we don't deny it and we don't know it.

Mr. Phelps: If not, I would like to prove it by this witness. Will you stipulate it?

Mr. Kramer: Since I think it is an irrelevant issue, I would rather not stipulate it. I don't deny it.

By Mr. Phelps:

Q. Mr. Healy, you prepared a list of the other features of the news-syndicates that might be available to——

A. I have such a list in my office which was prepared by [fol. 970] the Trade Magazine, Editors and Publishers.

The Court: I understand that these contracts were offered for a limited purpose, not to show anything in that particular field.

Mr. Kramer: That is correct. I think this is improper cross-examination. I move that the question and answers relating to that issue be stricken.

Mr. Phelps: We will withdraw them.

The Court: All right, they will be stricken.

Mr. Phelps: We have no further cross-examination.

Redirect examination.

By Mr. Kramer:

Q. What do you mean by a T. F. basis, Mr. Healy?

A. "Till Forbid". You make a gentleman's agreement with a syndicate that you will take a particular feature and use it until it is forbidden by one party or the other.

Q. Now you said that you didn't remember or you had forgotten when you got out your pre-date. You do remember that when you got out your pre-date, it was gotten out on Friday?

A. When we bought the States, the States had a pre-date that came out, as I remember it, on Thursday, and we continued it for a while on Thursday. Then we moved it to Friday, as I recall it. Then we went without a pre-date for quite awhile. Then we put a pre-date on which we printed on Friday night. Then we decided, after we got This Week Magazine, and had the comics that we could come out a little earlier than that, so, as I remember it, we moved up to [fol. 971] Wednesday or Thursday, and we printed on that date for four or five months. At the moment we don't have what is generally known as a pre-date.

Q. But you think you have had one within the past year?

A. I believe about nine months ago or ten months ago, we had one.

Q. Incidentally, what Sunday magazines do you sell with the Times-Picayune Sunday paper?

A. Dixie Roto magazine, which we edit and prepare, and This Week magazine, which we purchase.

Q. Now, one more question. If a man could not read, could he still not tell the difference between the Times-Picayune morning and the New Orleans States evening if he saw it on the street?

A. The mastheads are different. The Times-Picayune masthead is Old English type.

Q. No, I say if he couldn't read.

Mr. Wilson: If he couldn't read for what reason? Supposing he was blind.

A. If he was blind he couldn't tell the difference.

Q. Suppose he was an illiterate.

A. I think that an illiterate person with the two of them in front of him could discern certain differences.

Q. For one thing, he would know that very attractive peach covering you use in some editions of the New Orleans States, peach colored newsprint.

A. That would be one difference, yes, sir.

[fol. 972] The Court: Could he tell the difference between the States and the Times-Picayune; was that the question?

Mr. Kramer: That is right.

A. He could also tell the difference between the last edition of the States and the first edition of the States.

By Mr. Kramer:

Q. Through the color, is that it?

A. Yes, sir, and through other reasons.

Q. And he certainly couldn't get it confused with the Item, could he?

A. Well, I don't think so.

The Court: He could tell them apart, but he wouldn't know which was which?

Mr. Kramer: That is right. That is all I am interested in.

Recross examination.

By Mr. Phelps:

Q. Would an illiterate person have an easier time telling the Item?

Mr. Kramer: From the States, you mean?

Q. (Continued) From the States and Picayune?

A. An illiterate person could tell the difference between the Item and the States or Times-Picayune.

Mr. Phelps: That is all.

(Witness excused.)

[fol. 973] IRVIN M. ORNER, a witness called by and on behalf of the Government, after being sworn, was examined and tesified as follows:

Mr. Phelps: If the Court please, this is a witness not covered by the original list.

Mr. Kramer: That is right.

Mr. Phelps: I would like to have some idea as to what the purpose of the questioning will be, what category it falls within.

Mr. Kramer: We assume, Your Honor, that we will be accorded the same privilege. Mr. Orner is going to attempt to satisfy the interest of the Court and the plaintiff in regard to the character of the paper which the Item publishers call's the Sunday paper.

Direct examination.

By Mr. Kramer:

Q. Please state your name.

A. Irvin M. Orner.

Q. Where do you live?

A. In New Orleans.

Q. And where do you live in New Orleans?

A. 3502 Octavia Street.

Q. When did you first enter the newspaper business?
A. About 1919.
Q. And with what paper did you go?
A. The Pittsburgh, Pennsylvania, Press.
Q. And in what capacity did you start out in the Press?
[fol. 974] A. Traveling Field Representative for the Circulation Department.
Q. What other positions did you hold with the Press?
A. I was Country Circulation Manager for a period of several years, City Circulation Manager, and finally Assistant Circulation Manager when I left it.
Q. Where did you go when you left the Pittsburgh Press?
A. I came to the Camden, New Jersey, Courier Post.
Q. How long were you there?
A. For a period of about nine months.
Q. In what year was that?
A. That was in 1930.
Q. What did you do for the Camden paper?
A. Circulation, Assistant Circulation Manager.
Q. And then you went where?
A. To the Philadelphia Record.
Q. How long were you there?
A. I was there until February 1, 1947.
Q. What did you do for the Record?
A. I was Assistant Circulation Manager for about eight years, and then I became Circulation Manager and Circulation Director and Assistant Business Manager.
Q. What was your next employment by a newspaper? With what newspaper were you next employed?
A. Philadelphia Evening Bulletin.
[fol. 975] Q. When was that?
A. From February, 1947, until March of 1948.
Q. What was your next employment by a newspaper?
A. I spent six months in the City of Salt Lake, Utah, making a survey for the Tribune and Telegram.
Q. Then what?
A. Then I came to New Orleans with the Item.
Q. And what is your position with the Item now?
A. Business Manager.

Q. Have you been Business Manager since you came with the Item?

A. Yes, sir, I have.

Q. How many issues a week does the Item publish today?

A. Five issues week days and one Sunday.

Q. How many issues a week did the Item publish prior to December 24, 1950?

A. Six issues week days and one Sunday.

Q. What dateline is carried on the paper that your testimony has just labeled as Sunday?

A. Sunday dateline.

Q. When does the first edition of that paper go to press?

A. A few minutes before 9:00 a. m. Saturday.

Q. And when does the last edition go to press?

A. 3:30 to 4:00 p. m. Saturday afternoon.

Q. Was last Saturday's press time for the Item later than [fol. 976] usual?

A. Slightly, because of the Derby.

The Court: What is the time ordinarily of the last edition?

A. 3:30 to 4:00 p. m.

Q. But last Saturday's was definitely an exception?

A. It was an exception because we held it for the winner of the Kentucky Derby until about 4:30.

Q. Do you know how Media Records classify the paper you call a Sunday paper?

A. As a Sunday paper.

Q. Have they so classified it at all times since December 24, 1950?

A. Yes, sir, they have.

Q. How does the Audit Bureau of Circulations classify the paper you call a Sunday paper?

A. As a Sunday paper.

Q. What type of comic strips are carried in what you call your Sunday paper?

A. Sunday four-color comics.

Q. Do you have a magazine section in the Sunday paper?

A. We do. The American Weekly.

Q. Do you buy that ready-made?

A. We buy that from Hearst Publications. It is printed

in Chicago, and it is shipped into New Orleans about two [fol. 977] weeks preceding the date of issue.

Q. Who puts on that dateline that has the word "Item" in small print in the top right hand corner of The American Weekly?

A. The Hearst Printing Plant in Chicago.

Q. Do you solicit advertising? By you, I mean you or any of your associates in the Item. Do you solicit advertising for The American Weekly?

A. We do not.

Q. It comes to you with the advertising in it?

A. Correct, Sir.

Q. Do you have any other features that you buy separately for your Sunday paper from your five week day papers?

A. There are certain columns that we buy separately or exclusively for the Sunday paper that are issued by syndicates with a Sunday release, such as special cross-word puzzle features or special Sunday columnists who have a Sunday feature only.

Q. How many features can you think of that you run in your Sunday paper and do not run in the other five issues a week?

A. There are many comic features that appear in the Sunday issue that do not appear in the daily.

Q. How about other than comic features?

A. There are some columns that appear in the Sunday that do not appear in the five-day.

Q. State whether or not your Sunday paper has a separate section called Women's and Amusements, or some- [fol. 978] thing like that?

A. It does have.

Q. Does your daily paper have a separate section so denominated?

A. No, we have certain pages, one or two pages, or a part of a page devoted to women's news, but not as a section.

Q. Does your Sunday paper carry a section denominated "Classified Section"?

A. Yes, it does.

Q. Does your daily paper have a classified section or classified pages only?

A. It has pages only in the daily edition.

Q. Will you describe very briefly to the Court what the difference between a section and a series of pages is?

The Court: The Court knows.

Mr. Kramer: All right.

Q. Does your Sunday paper carry advertising for Monday sales?

A. It does, Sir.

Q. Do Saturday papers customarily carry advertising for Monday sales?

A. Generally, no.

Q. Do you know how the national agencies, that is, the advertising agencies, designate the paper you print on Saturday and call a Sunday paper in ordering advertising?

A. It is designated for the Sunday edition.

[fol. 979] Q. Now, calling your attention to the year 1950, prior to December 24, did you have the Associated—well, let's say prior to December first, did you have the Associated Press service in each of your six week day issues?

A. We did.

Q. Did you have the Associated Press service in your Sunday paper prior to December, 1950?

A. We did not.

Q. In December, 1950, when you shifted to six issues a week, one of which issue was dated Sunday, did you endeavor to carry the Associated Press in your Sunday paper?

A. Yes, sir, we did.

Q. Did the Associated Press permit you to do so?

A. We were not permitted to carry it in the Sunday edition.

Mr. Kramer: No further questions.

Cross-examination.

By Mr. Phelps:

Q. Mr. Orner, can you tell us when the—I think you called it the weekend edition of the Item is delivered into the home?

A. Saturday afternoon, approximately 2:30 to 5:00 p. m.

Q. What is the press time on your home edition?

A. Between 12:30 and 2:30.

Q. You do have some press times that are before noon, don't you?

A. Not for home delivery, Sir.

[fol. 980] Q. No, but you have some press time——

A. Yes.

Q. As a matter of fact, A. B. C. classifies those as pre-dates?

A. Prior to 12:00 Noon.

Q. Those that are printed prior to 12:00 Noon are classified as pre-dates?

A. Correct.

Q. And you do classify, for publicity purposes, that paper as a weekend edition, don't you?

A. No, it is a Sunday edition.

Q. But your sales promotion has been to the public that that was a weekend edition, hasn't it?

A. In some instances.

Q. In a substantial number of instances, hasn't it?

A. I wouldn't say a substantial number.

Q. Well, that was your whole basis for selling it, wasn't it?

A. Not necessarily.

Q. Well, it was a complete change-over from your former method of operation in the early part of December, 1950, wasn't it?

A. Only in this respect, that we dropped the Saturday daily paper and combined those Saturday features into the Sunday.

Q. Where are your Saturday comics carried?

A. In the Sunday paper.

Q. You mean in the so-called weekend paper?

[fol. 981] A. In the Sunday weekend paper, yes.

Q. Do you carry any other Saturday features in your, as you call it, Sunday paper?

A. Yes. The church pages, news of the churches, which column formerly appeared in the daily Saturday issue, appears in the Sunday paper now.

Q. Well, wouldn't it be more accurate to say that you

have combined your two editions, Saturday and Sunday, and distributed them on Saturday?

A. Well, that isn't the truth of the matter. We distribute the entire Sunday edition on Saturday.

Q. And it is a combination of your Saturday and your Sunday editions, isn't it?

A. That is correct, Sir.

[fol. 982] Q. And it is a combination of your Saturday and your Sunday edition, isn't that it?

A. That is correct, sir.

The Court: You have no edition which is delivered in the homes in New Orleans on Sunday?

A. That is correct.

The Court: All delivered on Saturday?

A. Everything is delivered on Saturday.

By Mr. Phelps:

Q. And it is delivered at substantially the same time to the homes in New Orleans as the Saturday States, isn't it?

A. Perhaps a little later.

Q. I think you worked for a newspaper in Camden?

A. Correct, sir.

Q. And you also worked for the Tribune and Telegram in Salt Lake City?

A. That is correct.

Q. Both of those papers sold general advertising at combination rates, didn't they?

Mr. Kramer: Objection, Your Honor, for a special reason. It is admissibility. Did you want me to state the grounds?

The Court: Yes.

Mr. Kramer: It is admissible to show what the Defendants knew, but not what this man knows about combination rates, under Your Honor's ruling.

[fol. 983] The Court: I will exclude it.

You ran a late edition last Saturday to cover the Derby results. Was that edition delivered in homes in New Orleans?

A. It was not, sir.

The Court: So, this paper that you call the Sunday paper is printed and delivered Saturday?

A. That is correct.

The Court: Have you ever made any survey to determine whether any appreciable number of subscribers read that paper on Sunday?

A. Only from general hearsay and comment that we hear.

There has been no survey made, to my knowledge, since we have had this new arrangement, but a great many of them read it on Sunday. We receive as many as fifty telephone calls on a Sunday morning from people that may not get a Sunday paper on Saturday and ask for one sent out on Sunday.

By Mr. Phelps:

Q. As a matter of fact, Mr. Orner, your press times on your current weekend editions were within two hours of your press times at the time you were publishing a Saturday edition, weren't they?

A. That is correct, sir.

Mr. Phelps: We have no further questions.

Mr. Kramer: No further questions. Thank you.

(Witness excused.)

[fol. 984] Mr. Kramer: Mr. Saux, please.

Edgar Saux, a witness called by and on behalf of the Government, being first sworn, was examined and testified as follows:

Direct examination.

By Mr. Kramer:

Q. Please state your name, spelling the last name.

A. Edgar Saux, S-a-u-x.

Q. Where do you live, Mr. Saux?

A. 6157 Marshall Foch, New Orleans.

Q. You used to be employed by the Department of Justice, did you not?

A. That is correct, sir.

Q. And when did you leave the Department of Justice?

A. August 13, 1946.

Q. And where did you go from there?

A. To the Item.

Q. And you have been there ever since?

A. That is correct.

Q. And what is your present capacity with the Item?

A. Office manager.

Q. What is the American Weekly Magazine?

A. I beg pardon.

Q. What is the American Weekly Magazine?

A. What is the——

[fol. 985] The Court: What is it?

Mr. Kramer: Yes.

By Mr. Kramer:

Q. What is the American Weekly Magazine?

A. It is the magazine section that goes out with our Sunday paper.

Q. And is it shipped to you from outside Louisiana?

A. It comes to us from Chicago.

Q. By rail? Do you know?

A. By rail.

Q. It is printed how far in advance of the dateline it carries?

A. It is necessary that we—I can tell you: We have to notify them eighteen days in advance as to the number desired. I don't know exactly when it is printed.

Q. Do you, in New Orleans, solicit advertisements for inclusion in the American Weekly?

A. No. We do not.

Q. Do you have any choice in obtaining or in accepting or rejecting advertising for the American Weekly?

A. No. We do not.

Q. Who handles the obtaining of advertising for the American Weekly?

A. The Hearst Publishing Company has their own salesmen, as far as I know.

Q. I hand you Government Exhibit 125 for identification and ask you to tell me what it is and who prepared it.

[fol. 986] (Document handed to the witness.)

(The document referred to was marked "G-125" for identification.)

Mr. Phelps: If the Court please, may we inquire as to the purpose of this line of examination. The relevancy is not apparent to me at this time.

Mr. Kramer: There was some suggestion in the examination of the space buyers that what the Item lost on the daily advertising they regained in the Sunday advertising, and I am suggesting that that, true or false, can have no relevance for two reasons: One, the Item had nothing to do with getting the advertising, so that it gives no picture, whatever, as to the effect of the unit rate, since the advertiser didn't come to New Orleans to buy advertising space in the American Weekly; and, secondly, to show that the American Weekly is not a financially profitable operation to the Item, in any event.

Mr. Wilson: If the Court please, I can't see where it is in any way relevant whether it is a financially profitable operation to the Item; and, on the other point, I don't see how this proves anything on that, because of the fact that an advertiser, as these men testified on the stand—He said: "When I had my advertising in the American Weekly, and I knew that the American Weekly was being distributed by the Item, I didn't bother to put it in the Item".

Now, it doesn't make any difference where he bought it. He is not concerned about that. The space buyer in New York isn't concerned about that and the fact that it doesn't [fol. 987] bring profit to the Item doesn't concern the space buyer a bit; so, I can't see how this would in any way tend to show that the testimony given by those men, that when they put advertising in the American Weekly, they felt that they didn't need the Item any more, because the Item was distributing the American Weekly as part of their newspaper.

Mr. Kramer: I neither agree nor disagree with what Mr.

Wilson has said. That wasn't quite my point. Perhaps I haven't been clear.

As I listened to the testimony, I thought it would be elicited for, and substantiating the proposition that the lineage that the Item lost it regained through the American Weekly and I——

The Court: I don't think he went quite that far.

It seemed to me the question was whether or not the lineage in the American Weekly should be taken into consideration in determining the total lineage in the Item.

Mr. Kramer: Very well put, Your Honor, and I think this testimony tends to show why it shouldn't be.

The Court: I don't see how the money side of it is of any interest. If they take advertising which is not profitable, that is nobody's fault but their own.

Is that what it comes to?

Mr. Kramer: I didn't say "unprofitable"; I said "financially unremunerative".

Mr. Wilson: I will agree to substituting "financially unremunerative" for "unprofitable".

[fol. 988] Mr. Kramer: I think the American Weekly is highly profitable to the Item, since it helps them sell the paper. There is no dispute about that.

The Court: That is pure conjecture. You said, "There is no dispute about that".

Mr. Kramer: I mean: The Government doesn't contend the opposite, Your Honor.

The Court: All right.

Mr. Kramer: I would like to ask a moment to consult with my associates.

The Court: I understand the objection was withdrawn.

Mr. Phelps: The objection has not been withdrawn, Your Honor. I wholly fail to see the relevance of it and I don't feel I can conscientiously withdraw the objection.

The Court: I understood Mr. Wilson to make some remarks.

Mr. Wilson: No. I didn't. I said I would accept the amendment of my language when I said "unprofitable".

Mr. Kramer: Your Honor, I would like to be heard a little bit on this.

The Court: All right.

Mr. Kramer: You hear testimony on one day and I get an effect from it and then counsel describe a different effect to it the next day. You may be the one, meaning me, who is mistaken.

Here, we are talking about the effect of a unit rate by Defendant that doesn't have a forced combination on Sunday; [fol. 989] therefore, I thought that it was completely irrelevant to bring out what happened on Sunday in the Item or in the Defendant's papers respecting advertising lineage; however, it was brought out.

Now, I am faced with the proposition of not knowing how, at some later time——

The Court: Why did you think it was irrelevant?

Mr. Kramer: Because the unit rate doesn't apply to Sunday, and that is what we are trying, primarily, in this case. It is not a compulsory unit rate, as I understand it.

Mr. Phelps: If the Court please, the point of the American Weekly testimony was almost solely this: That certain advertisers saw no further need or less need for the six-day Item when they began reaching the readers of the six-day Item through the American Weekly.

Mr. Kramer: May I inquire of the Court if he understood that, because I didn't, and the reason that I didn't was because they went into the lineage and dollars. If they hadn't done that, I would never have been here.

You did ask questions about lineage and dollars in the American Weekly.

The Court: Isn't it one of the contentions of the Government that national advertisers are kept out of the Item and do not advertise in the Item because they are forced, by virtue of this unit rate, to advertise in the Picayune and the States?

Mr. Kramer: Daily, yes, Your Honor.

We make no charge regarding the effect on the Sunday [fol. 990] Item of the unit rate, the forced combination rate adopted on February 1, 1950.

The Court: May I ask why you do not make that contention?

Mr. Kramer: Because they do not have a forced combination rate, requiring you to advertise in the Sunday paper. By "they," I mean the Defendants.

I just feel terribly inadequate, because I realize that is the first time I have ever gotten that point over publicly in this trial. To the Court is what I mean by "publicly".

We all knew it here. We have been sitting here. Here we are nine days and I am just getting my notion clear.

The Court: I do not see how you can arbitrarily draw the distinction you are drawing.

If the advertisers are compelled to take advertising in the daily States, which they do not want, how can you say that that keeps advertising out of the daily Item and does not keep it out of the Sunday Item, merely because the unit rate doesn't apply to the Sunday?

Mr. Kramer: I don't know whether it keeps it out of the Item or not. I am saying I am not contending that, Your Honor.

I mean: If we wanted to go into the Sunday lineage figures, if the Court please, and I am not sure—Mr. Houghton isn't here; but I think they would not in any way affect our statistical position. It is that I think the issue is irrelevant.

These letters that we have been introducing about the Sunday paper: You recall the letters about how poor it was [fol. 991] after a while and Mr. Kelly referred to it as an interloper.

They weren't designed to show anything other than the Defendant's intent with respect to the attempt-to-monopolize charge.

The Court: Isn't this Court going to be called upon to decide what impact the unit rate has on the advertising lineage in the Item?

Mr. Kramer: Well, it was our position that the way you determine that impact is to compare daily lineage figures with the Defendants' papers with the figures of the Sunday——

The Court: Let me ask you this question: If an advertiser discontinues advertising in the Item, daily, because of the fact that he is advertising in the American Weekly Magazine—If that is not developed, if no consideration is given to the American Weekly Magazine, is there not a grave possibility that the Court would then impute to the unit rate an effect which is more properly chargeable and

only chargeable through the presence of the American Weekly Magazine in the field?

Mr. Kramer: I am afraid I don't——

The Court: In other words, you are reaching a conclusion, without taking all the factors into consideration.

Mr. Kramer: If the Court please, I am perfectly willing, when they come with their case, to show or attempt to show —I don't think they will go further—why they should have included Sunday; but it seems to me, to suggest to this Court, as they have done in cross examination, that the Item recouped on Sunday what it lost on weekdays in the American Weekly in the face of these figures is something.

[fol. 992] The Court: Quoting the dollars and cents.

Mr. Kramer: Quoting the dollars and cents, yes.

I think there, if Your Honor will forgive the homeliness of our expression, you have got a point there. I see that.

Perhaps, these figures should be by lines.

Let me ask the witness:

By Mr. Kramer:

Q. Can you state——

Mr. Phelps: We have an objection pending, Mr. Kramer.

Mr. Kramer: Does anybody remember the question on which the objection was put?

The Court: I think probably the Reporter has it.

I think we can recess for lunch at this time and give her time to find it.

We will recess until 2:00 o'clock, gentlemen.

(Whereupon, at 12:30 o'clock, p. m., a recess was taken until 2:00 o'clock, p. m. of the same day.)

[fol. 993] Afternoon Session—2:00 p. m.

Colloquy Between Court and Counsel.

Mr. Kramer: If the Court please, when we closed at the noon recess we were discussing the relevancy of dollar value and lineage, perhaps, of advertising carried by the Item in the American Weekly. And I devoted the noon

hour to thinking about the problem. I would like to state to Your Honor very briefly what my conclusions are. I think that this testimony raises the entire question as to Sunday lineage in the Item and in the Times' Picayune's paper.

In our trial brief, on page 4, we made it clear that we were referring to a loss of lineage in the daily Item. We feel that to compare the loss in total lineage (and by loss I mean loss in relative position), the share of total lineage —to compare the share of total lineage in the States with that of the Item, daily and Sunday, is a completely unsound basis of comparison because it is comparing, if I may say so, oranges with apples and oranges.

Now, if the Sunday lineage is relevant (We don't think it is)—but if it is relevant, I suppose then you would have to compare the total lineage carried by the Sunday papers published by the defendant with those published by the Item during the same weeks. For example, suppose that the Item had a radio station which was operating successfully, and the equivalent of newspaper lineage in radio time showed that the Item's relative position in the market, and its absolute position in the market, if you included the radio, had not materially changed. It seems to me that that would throw no light upon the effect of the alleged restraint on newspaper advertising.

[fol. 994] Here we are concerned, and we charge only a restraint through the unit rate on daily newspaper advertising. Now, we charge restraints upon Sunday, but not through the unit rate.

Now, that brings me to this position. If that is so, why did we bring Mr. Saux and ask him about Sunday lineage? And I think the answer to that is that we were anticipating the defendants' case. It seems to me that when we show the Court what the daily lineage comparison figures show, we have certainly sustained the burden, assuming our entire legal theory is sound, sufficient to require the defendants to go forward, if they think the Sunday issue is relevant, and show, in their case, why if you include the Sunday picture it changes it, and, second, why it should be included. If they do that and if they are permitted to do it, then it occurs to the Government that Mr. Saux' testimony

would become relevant. Of course, if they attempt to do that we shall first argue that it is inadmissible. Our second argument will be that if it is admissible we want to know what they are comparing Sunday lineage with.

The Court: Well now, if you just exclude the Saturday Item, then you will be making comparisons between a six-day paper and a five-day paper, and you are asking the Court to attribute the loss, whatever advertising is lost by the Item, as a result of that reduction of one day, to attribute that loss to the unit rate, are you not?

Mr. Kramer: I think not, Your Honor, and I would like to state why, if I may.

The Court: Surely.

Mr. Kramer: We have not introduced any figures re- [fol. 995] lating to 1951 up to this stage in the case. We have introduced figures relating to 1950 and back of there. The Item Sunday paper publication on Saturday only commenced on the 24th day of December, 1950. So that no matter who is right as to that controversy it could only affect two fifty-seconds of one year.

Now, we think that the Government has sustained its burden of proof, figure-wise, by showing '49 and '50. If the defendants think that '51 would change the picture, I would assume it would be up to them to introduce figures as to '51. At that time, Your Honor would have to decide, at least tentatively, what disposition, how the Saturday paper,—the paper printed by the Item on Saturday and called a Sunday paper—is to be treated.

I unqualifiedly agree with Your Honor that the Sunday question would become pertinent under our theory as well as the defendants' for 1951 figures. But we have introduced none and we have not intended to. We may have to on rebuttal if they go into it.

I will be interested to learn what it shows by any of the various tests that one could develop, but I certainly urge, with all the force at my command, that if we are going to get into Sunday then you compare the Times-Picayune with the Item.

One further point: There has been some suggestion by the Court, in which the Government may have been responsible for planting the seed (I don't know) some months ago,

that we are trying a case which will demonstrate specific damage to the Item. That is not our purpose, and I am not sure that we could do it if we tried. For example, there [fol. 996] has been talk that the Item has not been doing well, both in the trial and in the pre-trial hearings. It is entirely possible. I don't know the answer and am unable to contend either way that that has been due to management problems, that it has nothing to do with the unit rate. For example, they may have lost advertising, may have been wasteful in their expenditures on salaries; I don't know. I am not going to try to answer it. If the Item feels it has some grievance against The Times-Picayune and it is brought to legal battle then some court, some day, will have to decide it. I am completely uninterested.

The Court: Does this mean you are not going to introduce the figures?

Mr. Kramer: The result is, at this time we withdraw Mr. Saux and reserve our right to call him in rebuttal.

The Court: Very well.

(Witness withdrawn.)

Mr. Phelps: I trust that our silence will not indicate any acquiescence in any of the views stated by Mr. Kramer.

Mr. Kramer: Mr. Saux, you are excused until further notice.

[fol. 997] Henry Sheets, a witness called by and on behalf of the Government, after being sworn, was examined and testified as follows:

The Court: Where were you yesterday?

The Witness: Your Honor, I was sick yesterday. That is all I have to say—I was just sick.

The Court: Are you sick today?

The Witness: No, I am not sick today, but I had colic, something similar to a kind of colic yesterday.

The Court: Marshal, take custody of this man temporarily. Take him upstairs.

You are in contempt of Court. You are in the custody of the Marshal.

Mr. Kramer: I will call Mr. Leeming.

Mr. Phelps: If the Court please, I don't believe this is one of the witnesses indicated on the Government's list.

May we inquire as to the particular point for which this witness is called?

Mr. Kramer: Mr. Leeming has been called to give testimony concerning the facts on the lineage figures in Government's Charts Numbers 107 and 108-A, automotive and financial categories in the Media Records included. He is also being called to testify concerning the accuracy, comparative accuracy, of the classifications denominated by Media Records as general advertising.

[fol. 998] FRANK LEEMING, a witness called by and on behalf of the Government, after being sworn, was examined and testified as follows:

Direct examination.

By Mr. Kramer:

Q. Please state your name.

A. Frank Leeming.

Q. Where do you live, Mr. Leeming?

A. 57 Hawk Street, New Orleans.

Q. What is your occupation or position?

A. Advertising Director of the New Orleans Item.

Q. Will you please state when you entered the newspaper industry.

A. Directly, in 1938.

Q. And who were you with then?

A. Scripps Howard in Oklahoma City.

Q. And from there where did you go?

A. The next newspaper?

Q. Yes.

A. Philadelphia Record, 1944.

Q. And from there where did you go?

A. New Orleans Item.

Q. When did you come with the Item?

A. August 1, 1949.

Q. Are you familiar with the publication known as Media [fol. 999] Records?

A. Yes.

Q. Did I ask you what your precise duties were at the Item?

A. Advertising Director.

Q. Are there any types of advertising included in general display advertising by the Item that are not included in general display advertising by Media Records?

A. Repeat that question, please.

Q. Are there any types of advertising included in general display advertising by the Item that are not included in general display advertising by Media Records? I should say, perhaps, included on your general rate card as general advertising.

A. Well, we have advertising that Media Records measures as general advertising that is not general advertising. Does that answer the question?

Q. That is right, and it is stated a lot better than my question. Are there any accounts—let me put it to you this way: do you know whether the classifications "general display" in Media Records includes all advertising known as general display by the Item?

A. No, it does not.

Q. That means that there is some classified as general display by Media Records that are not so classified by the Item, is that right?

A. And vice versa.

Q. Now, I hand you a——

[fol. 1000] Mr. Kramer: Apparently, if your Honor please, Government Exhibit 124, which is the memorandum from Mr. Healy to Mr. Rashid, has never been offered and admitted in evidence. I offer it now.

The Court: It will be admitted.

(The document marked "G-124" for identification, was received in evidence.)

By Mr. Kramer:

Q. Mr. Leeming, I show you exhibit marked "G-125" for identification, and ask you to tell me whether or not you prepared this document.

A. Yes, I did.

Q. Please state the basis upon which it was prepared.

A. This is general display in the daily papers, the advertising as measured by Media Records for the years '49 and '50, reduced to net general advertising figures by subtracting that lineage billed at retail display rates.

Q. By the Item?

A. By the Item.

Q. Now, of course, you don't know of your own knowledge, do you, how the Times-Picayune and States bill their accounts?

A. No. I am using the same criterion as used at the Item.

Q. You are assuming that the Times-Picayune and States bill the same way, and, if they do, this is what the results would show, is that it?

A. Yes, sir.

[fol. 1001] Q. Is it correct to characterize the deductions that are made, deductions that have been made from the general classification used by Media Records if you follow the classification used—the classification system used by the Item, is it fair to say those deductions are relatively insignificant?

A. I would say so.

Mr. Phelps: I don't understand the question. Read it please.

(Question read by reporter.)

Mr. Phelps: I still don't understand the question.

Mr. Kramer: Would Your Honor like me to rephrase it?

The Court: Perhaps you had better.

By Mr. Kramer:

Q. Looking at Table "G-125" for identification, which I understand you prepared, Mr. Leeming, state whether the deductions that you have made from the type of advertising classed by Media Records as general, which you classify as retail, are substantial or relatively insignificant deductions?

A. I think they are small in ratio to the total.

Mr. Kramer: Now, if the Court please, I offer "G-125" in evidence, subject to such objections as the defendants may have after they have examined the column relating to the Times-Picayune and the column relating to the States.

Mr. Phelps: If the Court please, at this time, it seems [fol. 1002] to me that the offer is clearly inadmissible in

view of the fact that it is apparently an effort to reclassify what Media Records call general into the classification that Media Records call retail.

Now it is one thing to take automotive and financial, which fall within neither the classification retail nor the classification general, and reallocate those, but to take something that is general in Media Records and classify it into retail seems to me to be doing something that would make us analyze every account that Media Records handles.

Mr. Kramer: I think I can clear this up and perhaps counsel and I can agree by asking one question, with the Court's permission. Do the defendants attack the Government's use of the classification "general" in Media Records on the ground that there are some accounts classified by Media Records as general which the Times-Picayune and States or the Item classify as retail?

Mr. Phelps: If the Court please, we have no objection to the breakdown made by Media Records between general and retail, and we think that we would be here all day if we started trying to break down that category.

Mr. Kramer: I think counsel has saved an enormous amount of time, and I sincerely thank you. I move to strike that portion of Mr. Leeming's testimony which relates to "G-125".

The Court: Let it be stricken.

(Off the record discussion.)

[fol. 1003] By Mr. Kramer:

Q. Mr. Leeming, do you have your Media Record books there?

A. Yes, I do.

Q. Will you state the classifications that they use, they meaning Media Records?

A. The advertising classifications?

Q. Yes.

A. Retail display, general display, automotive display, financial display, and then a line of the total of the four displays known as total display, classified, legal, and total advertising.

Q. Thank you. Now, are there any accounts classified by

Media Records as automotive and financial that are classified by the Item as general advertising?

A. Once again, please, Mr. Kramer.

Q. Are there any accounts classified by Media Records—strike accounts. I mean, are there any kinds of advertising classified by Media Records as automotive or as financial that you classify at the Item as general advertising?

A. Yes. We only have the two breakdowns.

Q. General and retail display?

A. That is right, and classified.

Q. Now, are there any types of advertising classified by Media Records as automotive and/or financial that are classified by you as retail display?

[fol. 1004] A. Yes.

Q. I hand you Government Exhibit 125, and I will ask you to tell me if you prepared the tabular material on that document.

A. Yes, I did.

Q. Will you state to the Court what that document purports to be?

A. This is the daily automotive and financial display advertising as measured by Media Records in the years '49 and '50 reduced to net general advertising figures by subtracting that lineage billed at retail display rates.

Q. Now, you say "billed at retail display rates". Do you mean so billed by the Item?

A. So billed by the Item, yes.

Q. I notice that in 1949, you have under the Item column, 718,744 lines. Is that what Media Records carried for automotive?

A. That is correct.

Q. And deducted from that is 359,009 lines. What is that figure?

A. That is the figure measured by Media Records as automotive, but which was actually retail display lineage.

Q. That means the Item carried it or sold it at the retail display rates?

A. That is correct.

Q. And not at the general rates?

A. Correct.

[fol. 1005] Q. And you did the same thing for financial, is that right?

A. That is right.

Q. And you repeated the analysis and comparison again for 1950, is that right?

A. Right.

Q. All right. Now, I notice you also have columns here for the Times-Picayune and the States. Do I understand that the column for the Times-Picayune and the column for the States, adjacent to the words "Media Records" in each of the four places that that appears on "G-125", are simply copied from the book "Media Records", is that right?

A. That is right.

Q. Now, how did you get the material for the Times-Picayune and for the States that is listed adjacent to the words "less retail"?

A. The same yardstick as was applied on the Item deductions.

Q. Do you mean by that that if you assume that the Times-Picayune and the States decide when an account is to carry the retail display rates rather than the general rate to be the yardstick that the Item applies, the calculation would come out as you have so indicated here, is that right?

A. That is right.

The Court: What does that mean, "the same yardstick"?

Q. Did you go through each of your accounts in automotive and financial to determine each one separately?

[fol. 1006] A. Yes, that is right.

Q. Did you go through each of the accounts for the Times-Picayune and the States?

A. Yes, they are all listed together, the three papers together.

Q. In Media Records?

A. Yes.

Q. Were there any accounts of specific advertisers that the Times-Picayune or the States had that you didn't have?

A. That we didn't have?

Q. Yes, that is right, in the retail display category.

A. In retail display?

Q. Yes.

A. Well, there are many accounts that we do not carry that they have.

The Court: How do they get these figures? Does the Times-Picayune report this to Media Records?

A. They take the papers and measure it.

The Court: They reported in one lump, 681,902. Where did you get 206,526?

A. Those are the accounts measured by Media Records as automotive and included in that 681,902, but that were billed at retail rates, if the same criterion is used by the Times-Picayune Publishing Company as is used by the Item.

The Court: You mean that Media Records, in addition [fol. 1007] to publishing the total, that is, the 681,902, made a breakdown of that which was billed at retail, or did you make the breakdown?

A. I made the breakdown.

By Mr. Kramer:

Q. But they list every account?

A. They list every account by account.

Q. Do you have those here?

A. Yes.

Mr. Phelps: If the Court please, may we approach the bench?

The Court: Yes.

(Bench conference.)

Mr. Kramer: What is Your Honor's disposition as to further examination of Mr. Leeming on this table, does Your Honor feel that the witness has brought out clearly what it is? I think that that is the only important thing at the moment. Before offering "G-125", I would like to state very briefly its purpose, the reason it was offered. The charts prepared by Mr. Houghton, included shifts in lineage only in the classified general display as carried by Media Records. Upon his arrival in New Orleans informally and in open Court yesterday, it was suggested that since the forced combination rate applied to some auto-

motive and some financial advertising carried and so listed by Media Records, but called general display by the Item and the Times-Picayune and New Orleans States, that the charts might not truly reflect the effect of the unit rate upon the lineage position in general display advertising. [fol. 1008] Therefore, we submit these charts for whatever—this table relating to that subject for whatever assistance it gives the Court at the appropriate time in determining what the effect of unit rate on daily newspaper advertising in New Orleans was. I offer "G-125" in evidence.

The Court: As I understand it, where it was billed at the retail rate, the unit rate did not apply?

Mr. Kramer: Correct. Therefore, it has been deducted.

Mr. Phelps: I understand, Your Honor, that we will reserve our right to examine the exhibit and defer cross-examination in the event we find it desirable.

Mr. Kramer: If the exhibit is right, do you still want to cross-examine him?

Mr. Phelps: I will have to reserve an opinion on that, if the exhibit is right.

Mr. Kramer: You may step down, Mr. Leeming.

(Witness excused.)

[fol. 1009] Thomas J. Adams, a witness called by and on behalf of the Government, after being sworn, was examined and testified as follows:

Direct examination.

By Mr. Flurry:

Q. Mr. Adams, will you please state your full name and address?

A. Thomas J. Adams, 7826 Nelson Street, New Orleans, Louisiana.

Q. By whom are you employed?

A. The Times-Picayune Publishing Company.

Q. How long have you been with the Times-Picayune Publishing Company?

A. Since 1921.

Q. What positions have you held with the company?

A. I believe the first two years, I was bookkeeper in the circulation, and then about three years, I was Assistant Credit Manager. Since 1926, I have been Credit Manager, Credit, Collection and Accounting Manager.

Mr. Flurry: May it please the Court, we wish to examine Mr. Adams as a Managing Agent of the company.

The Court: Very well.

By Mr. Flurry:

Q. Mr. Adams, do you or those under your supervision make any distribution on the records in your office of [fol. 1010] revenues received by the company to the Times-Picayune, including the Sunday paper as one unit and to the States as another unit, and to the radio station as a third unit?

A. Mr. Flurry, we would term that as an entry on our records.

Q. Well, you have made the entries in that fashion, pattern?

A. Along with other entries to signify the various classifications that we would divide our business into.

Q. Well, you do make a separation for the morning and Sunday paper as one unit and the evening paper as another, do you not?

A. We would make an entry, in some cases, arbitrary, showing in advertising morning and evening and Sunday with subsequent arbitrary divisions of those entries.

Q. Well, now, what divisions were they?

A. On what classification?

Q. What were the divisions?

A. If I may inquire, what classification? Do you mean advertising or circulation or——

Q. On revenues.

A. Mr. Flurry, I don't believe I understand the question clearly.

Q. Have you, in your record entries, kept separate entries for revenues received for the States to those received for the morning and Sunday?

A. Well, that would vary, according to the classification, we'll say, in advertising.

Q. Are you familiar with the annual reports, audit re-
[fol. 1011] ports of the company?

A. No, sir, only so far as the revenue part of it is concerned in handling the accounting and credit and collection of it.

Q. Well, let's confine this to the revenues.

A. All right, Sir.

Q. Are you familiar with the annual report with respect to revenues?

A. Yes, sir.

Q. Do those annual reports divide the revenues for the States and the revenues for the Sunday and morning as separate units?

A. Mr. Flurry, the reports that would be made up under my supervision would show entries for morning, evening and Sunday.

Q. Separately?

A. Separate entries for that, as well as other classifications, or subsequent breakdowns for certain classifications.

Q. In order that you may better understand, Mr. Adams, just what I am asking you about, I show you Government Exhibit Number 8 and ask you to examine Schedule 1 contained in that exhibit, which is headed "The Times-Picayune Publishing Company, Statement of Profit from Operations Before General and Administrative Expenses, for the Years ending December 31, 1949 and 1948 and Comparison", and state what division has been made in that report as between the Times-Picayune and the States.

A. The Schedule shows the Times-Picayune and the New Orleans States, and it is quite evident that the report made
[fol. 1012] up showing the Times-Picayune morning and the Times-Picayune-States Sunday has been added together for one entry.

Q. Now, the point I am asking you, Mr. Adams, is that the manner in which you make those entries in your books.

A. Yes, sir, with further intermediate breakdowns for other work.

Q. Now, do you keep in your office records of the revenues received from circulation of newspapers sold?

A. Yes, sir.

Q. How are the revenues from circulation distributed in

your records with respect to the morning and Sunday papers, and the States?

A. Any particular subdivision of the circulation, if I may inquire?

Q. Do you make any distribution of the circulation revenues to the morning and Sunday and to the States?

A. Yes, sir.

Q. Upon what basis is that distribution made?

A. Upon the base rate charged to the carrier or to the dealer.

Q. Is there one price per copy for each of the papers to all classes of carriers or distributors?

A. To all classes of carriers, the price is the same.

Q. Do you arrive at your circulation revenues simply by multiplying the number of copies by the price per copy?

A. Yes, sir.

[fol. 1013] Q. So that is an actual figure for the revenues, is it not?

A. Yes, sir.

Q. Now, is that credited to the States for States' circulation on that basis?

A. For the number of papers that they draw for the States, at their base rate, is credited to States' circulation.

Q. And the same thing applies to morning and Sunday?

A. Yes. I might qualify that States, that if some of the States' carriers have a Sunday paper, that would go in with States' revenue.

Q. You mean that if a States' carrier sells Sunday papers, that the revenue he turns into the company is entered in your books to the credit of the States?

A. Yes, sir, to the Times-Picayune Publishing Company.

Q. Are there any exceptions to that procedure with respect to the amount of revenues received and the division of them in the circulation?

A. I was speaking of carriers only. There are other classifications, a subsequent breakdown of the circulation revenue and what distribution we make of those records.

Q. Are papers sold to country carriers handled in the same manner as those in the city?

A. No, sir.

Q. How do you arrive at the distribution of your revenues as between the different papers on country carriers?
[fol. 1014] A. All of the morning and all of the Sunday at the respective rates is credited to the morning and Sunday entries on our books. The States is credited as an entry on our books for the New Orleans States.

Q. Do you have only one price per copy for the morning paper as to all carriers?

A. To all carriers, yes, sir.

Q. What is that price today?

A. We call it .02666. We stop on the fifth digit, I believe.

Q. Now, what is the price of the States?

A. .02666.

Q. And what is the price on the Sunday?

A. .116, I believe that is it. There has been one or two changes since then.

Q. Does your department keep the records of all advertising revenues received by the company?

The Court: I think the witness is making a distinction in his own mind between carriers and the other people who get papers from him, are you not?

A. Yes, sir.

Q. What are the different classifications in circulation?

A. We have carriers, street sales, country news dealers, counter sales, those four are the major ones.

The Court: Wholesalers?

A. That goes under street sales.

Q. How do you handle the street sales with respect to the
[fol. 1015] revenues?

A. They are charged as street sales to the wholesaler at prices—I can't quote the exact figures.

Q. Well, are the revenues computed by multiplying the number of copies of each paper which you sell to that wholesaler by the price per paper for the wholesalers' price?

A. Yes, sir.

Q. Now, you refer to counter sales, was it not?

A. Yes, sir.

Q. Is that handled in the same manner?

A. It is handled in the same manner, a very small classification for back-date copies at miscellaneous rates, but it is based on a base rate for the number of papers that they obtain.

Q. I believe you stated that you kept records in your department of all advertising revenues received?

A. Yes, sir. There are two exceptions, classified cash register and a foreign desk for classified advertising.

Q. Do you know how the revenues are distributed which are received in those two categories?

A. They are received over the counter as the cash register advertising, as we term it; the foreign desk is received through the mail.

Q. Well, now, what goes with those revenues in your account? Are they distributed in your accounts?

A. They are distributed by the auditor and they are [fol. 1016] classified as paid-in-advance business that does not come through the work of our department.

Q. How are the revenues received from retail display advertising distributed on your records with respect to the morning, Sunday and evening papers?

A. For the number of lines published in the paper at the contract rate governing that classification would be the amount an advertiser would be charged for morning advertising, in retail. The same principle applies to the States and Sunday.

Q. In other words, it is based on a rate per line times the lines for each account carried in each of the respective papers?

A. Yes, sir. For retail advertising, Mr. Flurry.

Q. Yes. Now, are the retail display advertising revenues received from retail advertising in the morning and Sunday papers consolidated as one account?

A. Yes, sir.

Q. And in the States they are kept as a separate account?

A. Yes, sir.

Q. Are there any retail display advertising revenues which are not received and handled in the manner which you have just explained?

A. No, sir.

Q. How were revenues received from general advertising

distributed as between the different papers prior to February, 1950?

A. By a division as shown by the rate card. Then where the unit rate took effect above the ten thousand line by a [fol. 1017] division of the rate itself, not on a percentage basis, but part of, say, a fifty-two cent rate would be used for the States and part of it for the Times-Picayune, approximately on a circulation basis without going into too many fractions.

Q. If I understand you correctly now, advertising which was not taken, general advertising which was not taken under the combination rate was credited according to the newspapers in which the ads ran, is that correct?

A. Yes, sir.

Q. And on the combination advertising, it was divided upon an arbitrary formula based upon circulation?

A. Yes, sir.

Q. Now, how were the revenues received from general advertising distributed after February, 1950?

A. Under the unit plan, the morning and evening was divided, thirty-six per cent evening and sixty-four per cent Sunday——

Q. May I refresh your recollection——

A. I mean morning. I'm sorry.

Q. May I refresh your recollection—I believe you said in a deposition that it was 66-34 was it not?

Mr. Wilson: That is what he said just now.

Mr. Flarry: I mean 34-66.

A. I believe 36-64 is correct. I believe my deposition was in error, because it is 36-64, based on the circulation. Then you have an evening and Sunday, twenty-four per cent evening and seventy-six morning for Sunday. Then you have a morning and Sunday—I believe that is 37-63, I am [fol. 1018] not quite sure. It is all based upon the circulation figures obtained from A. B. C., submitted and approved by the management.

Q. Now, in 1950, Mr. Adams, you had some contracts with advertisers that were made prior to the unit combination rate which became effective February 1, 1950, which contracts had not expired until some time in 1950, did you not?

A. Yes.

Q. How was the revenue from those contracts which had not expired, that ran over into 1950, distributed?

A. On the basis of prior to February 1, 1950, until the expiration of the contract. In other words, we continued the contract as is and used the rate division as we were until those contracts were completed.

Q. Now, how were the revenues from classified advertising distributed in your records?

A. We made one entry in our control books for classified advertising. At the end of the month, we divided eighty per cent, which would be morning and Sunday, and twenty per cent for the evening, as an arbitrary figure.

Q. That applied to all classes of classified advertising?

A. All kinds. There may have been an exception on over the river. It is credited exclusively to the States. But that was the main—that was the one column that takes care of ninety-eight per cent of the classified advertising.

[fol. 1019] Q. And do you understand that over the river classified was not sold on a combination rate, unit combination rate?

A. No, sir.

The Court: You asked do you understand that over the river classified was not sold on a combination rate and he said, "No, sir".

Q. Do you mean it was not sold under a unit combination rate?

A. It was not sold under a unit combination rate.

Q. And all of those revenues were credited to the States, is that right, from over the river classified?

A. Yes, sir.

Q. How long has your formula for the distribution of revenues from classified advertising been in effect?

A. Since March, 1935.

Q. That is since the time when the rate became effective?

A. Yes, sir.

Q. I call to your attention, Mr. Adams, in order that we may have the record straight on that, to Government Exhibits 19 and 20. I call your attention to the classified rate set forth in Government Exhibit 19 and then in Govern-

ment Exhibit 20, and ask you from those, if it isn't a fact that the classified unit combination rate became effective some time during August or September of 1935.

A. Mr. Flurry, it shows in these, "G-19" and "G-20", that it started in either August or September, so far as Standard Rate and Data Service is concerned. Probably we did not supply them those figures on the exact date that we adopted the plan in March, '35.

[fol. 1020] Q. Do you recall the exact date?

A. March 15, 1935.

Q. March 15, 1935?

A. Yes, sir.

The Court: That is when the unit rate on classified went into effect?

A. Yes, sir.

Q. Now, for what year did you take the circulation of the two papers for the purpose of arriving at your formula of 20-80?

A. Beginning March 15, 1935.

Q. In other words, the circulation of the two papers at that time, at the time the rate became effective?

A. Mr. Flurry, we did not use circulation as a basis for division of classified advertising. It was just an arbitrary figure accepted and approved by the management.

Q. Do you know what entered into the consideration of adopting that arbitrary figure?

A. I was there when it was adopted by Mr. Nicholson, Mr. Howard and Mr. Tims.

Q. Which Howard was that?

A. Mr. Alvin Howard. He was then Vice-President of the Times-Picayune and has since passed on. But there were few words. We just agreed that 80-20 would be an arbitrary figure, and we have been using that formula right along.

Q. Well, did you discuss at that time what formula [fol. 1021] should be used?

A. I do recall that we discussed it to the extent that whatever we adopted would be an arbitrary figure.

Q. Were you present when the decision was made to change to the unit combination rate on classified?

A. No, sir.

Q. You don't know anything about that?

A. No, sir.

The Court: What was that question?

(Question read by reporter.)

Q. Do you recall, Mr. Adams, whether or not the twenty per cent which you decided to credit to the States represented what you believed to be the actual earnings of the Item on classified at that time—I beg your pardon—actual earnings of the States out of the unit combination rate?

A. Mr. Flurry, it was an arbitrary figure that the management arrived at and I just continued to use 80-20.

Q. Do you recall who first suggested that division?

A. It may have been Mr. Howard. I am not too sure of that but I believe it was Mr. Howard.

Q. Do you recall whether or not there was any discussion as to any relationship between the twenty per cent credited to the States and what the States was considered to earn out of the combination rate?

A. No, sir.

Q. Mr. Adams, what is, in your opinion, the relationship [fol. 1022] of circulation to advertising revenues from general advertising?

Mr. Wilson: Just a minute—I don't understand the question.

(Question read by reporter.)

Mr. Wilson: I am still at a loss.

The Court: You are talking about the general advertising now?

Mr. Flurry: Yes, Your Honor. He says that the division on general advertising was made according to circulation. I am asking him what relationship there is between general advertising—between circulation and advertising revenues on general advertising.

A. Well, circulation is the number of readers you have, so we just took the A. B. C. figures, Audit Bureau of Circulation figures, and worked out an equation between the morning, evening and Sunday and submitted it to the man-

agement for approval, and they have been using those figures.

Q. And that was the only basis for the formula?

A. Yes, sir.

Q. Will you explain to the Court, Mr. Adams, what discounts are in the newspaper publishing business?

A. In my language, that is for paying your bill by the fifteenth of the month, two per cent on general advertising.

Q. Do you have any other kind of deductions from billing prices which you call discount, other than cash discount?

A. No, sir, not at this time.

[fol. 1023] Q. Do you have any deductions from prices billed which you call rebates?

A. Yes, sir.

Q. What are rebates in the newspaper sale of advertising?

A. In the event an advertiser elects to sign for fifty thousand lines of advertising during a contractural year and he uses one hundred thousand lines, he, therefore, has earned a lower rate. We would then credit his account with that difference.

[fol. 1024] Q. Now, are those credits to his account made at the end of his contract period?

A. Within fifteen to twenty days at the end.

Q. Am I right in understanding, Mr. Adams, that that advertiser would be billed at his contract rate on his monthly payments, but that at the end of his period, if he had earned a lower rate by carrying a greater volume, he would then be credited with a rebate for the difference in the two rates?

Is that right?

A. That is right.

Q. Now, are your cash discounts distributed according to the papers in which advertising was carried?

A. Yes, sir.

Q. How are the rebates distributed as between the separate papers?

A. The rebates are distributed in the very reverse of the way the charges originate.

Q. In other words, taking classified, for example: You would distribute the rebates on an 80-20 basis?

A. So far as our office records are concerned.

Q. Mr. Adams, have you seen a report made to the company by Haskins & Sells in May, 1945, in which Haskins & Sells made certain suggestions with respect to changes in the cost accounting system?

A. Yes, sir.

[fol. 1025] The Court: You said the rebates are made in just the reverse. You didn't mean——

A. I mean, the reverse of the entries, Your Honor.

If it was charged as an earning on the Times-Picayune, then when the rebate was issued, it would be credited on the part of the Times-Picayune. In our bookkeeping parlance, we would call it the reverse.

The Court: All right.

By Mr. Flurry:

Q. Mr. Adams, I show you Government Exhibit 126 and ask you if that is the report made by Haskins & Sells, about which I have just asked you.

(The document referred to was marked "G-126" for identification.)

A. I saw only that part that affected our department.

Q. I ask you if you recall if this is the report.

A. Yes.

Mr. Flurry: If it please the Court, we offer in evidence Government Exhibit 126,——

The Court: It will be admitted.

(The document referred to, marked "G-126" for identification, was received in evidence.)

By Mr. Flurry:

Q. ——being a report by Haskins & Sells, Certified Public Accountants, Hibernia Bank Building, New Orleans 12, Louisiana, dated May 18, 1945, addressed to The Times-Picayune Publishing Company, 615 North Street, New Or-

[fol. 1026] leans 12, Louisiana.

Unless the counsel for the Defendants insist, we would like to read only a part of this report.

I read from page 5 under the caption: "Allocation of Expenses with respect to the Operations of the Times-Picayune and New Orleans States.

"The books of the company record an allocation of expenses with respect to the 'Times-Picayune' and 'New Orleans States'.

"This allocation which, in some instances, is made on an actual basis, is generally on the basis of 80 per cent to the 'Times-Picayune' and 20 percent to the 'New Orleans States'.

"In this connection, it was noted that, except for certain relatively unimportant items, no allocation is made of maintenance, office and general expenses, all such expenses being charged to the operations of 'the Times-Picayune'.

"In addition, insurance, depreciation and taxes, other than social security taxes, are charged to the operations of 'the Times-Picayune'.

"If it is desired that the company's records reflect separately the net income of 'the Times-Picayune' and 'New Orleans States,' we suggest for the consideration of the management the advisability of the Auditing Department's making a study to determine the basis of allocation of all operating expenses to the operations of the two newspapers."

I hand you Government Exhibit 126, Mr. Adams, and ask [fol. 1027] you if Haskins and Sells made any recommendations with reference to any changes in the allocations of the revenue.

A. They recommend that periodical reconcilement be made of the circulation disclosed by the Audit Bureau of Circulation records for the calendar year or month of circulation billed by the Credit Department.

That is under "Revenues from Circulation". There may be others. I didn't read it all the way through.

Q. Will you glance through and see if there are any others?

A. That is as far as I observed in that report.

Q. I read this statement just preceding the sentence which you read, Mr. Adams: "Our test of the circulation

revenues included the application of the various rates used by the company to the respective sources of circulation, as shown in the Audit Bureau of Circulation book maintained by the Circulation Department.

"This test resulted in the disclosure of minor differences in the above-mentioned record."

Is that the matter about which they recommended the reconcilement, as between the Audit Bureau of Circulation?

A. I don't know what they had in mind when they made that recommendation, Mr. Flurry.

Q. Is this the only report of recommendations made by Haskins & Sells, which you recall having seen?

A. No, sir.

Q. Do you recall any other report making recommendations with respect to changes in the manner in which your accounts were carried?

[fol. 1028] A. I believe they made a recommendation, annually.

Q. With respect to changing the methods of your accounting system?

A. Affecting the department that I am assigned to, yes. I am sure they have, because I have been on the carpet several times about it.

Q. Were those recommendations made in writing?

A. Yes, sir.

Q. Could you produce for us those recommendations?

A. We may have them in the files there in another department. They would not be in our department, because we saw them return the letters to the management.

I will make an attempt——

The Court: Were these recommendations and changes of accounting methods? Or were they discrepancies that they found?

Just what sort of recommendations were they?

A. There were no discrepancies found, Your Honor. They were recommendations of the basic principle upon which we operate. Some of it may be in the method of assignment. Some of it may be in the formula of accounting. I have forgotten which.

The Court: All right.

LIBRARY
SUPREME COURT, U.S.

Vol. II

TRANSCRIPT OF RECORD

(Pages 673 to 1284)

Supreme Court of the United States

OCTOBER TERM, 1952

No. 374

THE TIMES-PICAYUNE PUBLISHING COMPANY, L. K. NICHOLSON, JOHN F. TIMS, JR., ET AL., APPELLANTS,

vs.

UNITED STATES OF AMERICA

No. 375

UNITED STATES OF AMERICA, APPELLANT,

vs.

THE TIMES-PICAYUNE PUBLISHING COMPANY, L. K. NICHOLSON, JOHN F. TIMS, JR., ET AL.

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA

FILED OCTOBER 3, 1952

Probable jurisdiction noted November 10, 1952

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. 374

THE TIMES-PICAYUNE PUBLISHING COMPANY, L. K. NICHOLSON, JOHN F. TIMS, JR., ET AL., APPELLANTS,

vs.

UNITED STATES OF AMERICA

No. 375

UNITED STATES OF AMERICA, APPELLANT,

vs.

THE TIMES-PICAYUNE PUBLISHING COMPANY, L. K. NICHOLSON, JOHN F. TIMS, JR., ET AL.

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA

VOL. II

INDEX

	Original	Print
Record from U.S.D.C. for the Eastern District of Louisiana, New Orleans Division—Continued		
Transcript of trial—Continued		
Proceedings—Continued		
Testimony of—Continued		
Lawrence J. Frank, Jr. (Resumed)	1063	696
Colloquy between court and counsel	1070	701
Testimony of Joseph A. Ward	1075	704
Frank C. Allen	1079	707
Harrison F. Houghton (Recalled)	1102	719

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JAN. 12, 1953.

—5440

	Original	Print
Record from U.S.D.C. for the Eastern District of Louisiana, New Orleans Division—Continued		
Transcript of trial—Continued		
Proceedings—Continued		
Testimony of—Continued		
Frank Leeming (Recalled)	1200	785
Harrison F. Houghton (Resumed)	1231	806
Colloquy between court and counsel	1378	905
Testimony of Harrison F. Houghton (Resumed)	1388	913
Frank Leeming (Recalled)	1461	962
Gordon M. Anderson	1466	966
Harrison F. Houghton (Resumed)	1497	986
Burt C. Guidroz	1498	987
Offers in evidence	1504	991
Motion to dismiss and ruling thereon	1511	995
Testimony of George Edward Conroy	1513	997
Forrest C. Buchanan	1614	1067
Colloquy between court and counsel	1647	1090
Testimony of George E. Conroy (Resumed)	1704	1093
George Healy (Recalled)	1726	1108
Roland Ladreyt (Recalled)	1732	1112
T. J. Adams (Recalled)	1753	1127
Donald W. Coleman	1761	1132
John F. Tims, Jr. (Recalled)	1786	1149
Harrison F. Houghton (Recalled)	1820	1171
Oliver Pepper	1839	1185
Roland Ladreyt (Recalled)	1894	1223
Donald W. Coleman (Recalled)	1898	1227
Reporter's certificate (omitted in printing)	1907	
Opinion, Christenberry, J.	1908	1233
Findings of fact	1930	1252
Conclusions of law	1940	1262
Final judgment	1942	1263
Petition of The Times-Picayune Publishing Company for appeal	1947	1266
Order allowing appeal	1948	1267
Citation (Omitted in printing)	1950	
Assignments of errors	1951	1268
Service of appeal papers under Rule 12 (Omitted in printing)	1955	
Motion to have original records transmitted to the Supreme Court (Omitted in printing)	1958	
Order allowing transmittal of transcipt of testimony and exhibits to the Supreme Court	1960	1271
Prayer for relief	1961	1272

	Original	Print
Record from U.S.D.C. for the Eastern District of Louisiana, New Orleans Division—Continued		
Supersedeas bond (Omitted in printing)	1962	
Praecipe of record (Omitted in printing)	1964	
Plaintiff's proposed final judgment	1966	1273
Petition for appeal of the United States of America	1973	1278
Order allowing appeal	1975	1279
Assignment of errors and prayer for reversal	1976	1279
Service of appeal papers under Rule 12 (Omitted in printing)	1978	
Citation on appeal (Omitted in printing)	1981	
Praecipe (Omitted in printing)	1982	
Clerk's certificate (Omitted in printing)	1984	
Motion for and order extending time within which to file record	1985	1281
Statement by the Times-Picayune Publishing Company of points to be relied upon and designation of parts of the record to be printed	1989	1282
Statement by the United States of points to be relied upon and designation of parts of record to be printed	1994	1283
Order noting probable jurisdiction	1998	1284

Mr. Flurry: We should like to request, Your Honor, that counsel for the Defendants produce or have Mr. Adams produce all those reports which refer to any accounting formulae.

Mr. Wilson: If the Court please, I see no reason for that. Mr. Flurry's people had complete access to all these re-
[fol. 1029] ports. They have read them through and they know all that they say.

I remember that the 1946 one said: "We refer you to our recommendations in our report of 1945".

They have read all that stuff, had complete access to them.

If the Court desires them, we will do our best to pull out all those reports; but they had a full opportunity at them.

Mr. Flurry: That is why, Your Honor, I am limiting to the proposition the reports that affect or refer to the formulae for their allocations.

Mr. Wilson: They are perfectly welcome to have them. We will get what we can find.

The Court: Has the Government had them?

Mr. Wilson: The Government has had them, had complete access to them.

The Court: They might have had access to them, without finding them.

Mr. Wilson: All of Haskins & Sells' reports were made available to them. We made everything we had available to them.

Mr. Flurry: If Your Honor will recall, we had requested this production when Mr. Tims was on the stand.

Mr. Wilson: That is right.

He referred to having had a letter and he was talking about having had his first letter some six or seven years ago, and I looked up the first one. I did have the second one here. I may still have it here.

The Court: Has the Government seen these reports?
[fol. 1030] There shouldn't be any difficulty in ascertaining that.

Mr. Kramer: Mr. Flurry and I have never seen them.

May we go down and ask the other three?

The Court: All right.

Mr. Kramer: Mr. Leonard, have you ever seen these reports?

(No audible response.)

Mr. Kramer: You mean, the ones you have seen or had are those that are already marked as exhibits?

Mr. Rashid and Mr. Leonard: Yes.

Now, there is one man who was present during the investigation that is not in the court room.

The Court: I suggest that we produce them, if you are able to produce them.

By Mr. Flurry:

Q. Now, Mr. Adams, were the changes which were recommended by Haskins & Sells in Government Exhibit 126 made by the company?

A. No, sir.

Q. There has been no change since that time in the method used by the company in the allocation of the expenses referred to in that report?

A. Not to my knowledge in the expense end of it, Mr. Flurry.

I am not able to answer clearly there; but in the revenue end, there has been no change of it.

Q. Are you familiar, Mr. Adams, with revenues for bad debts?

A. Yes. Revenues from bad debts. You mean, recovery [fol. 1031] of accounts previously charged off?

A. I am sorry. I mean, "Reserve for Bad Debts". That account.

A. Yes, sir. I am familiar with it, fairly so.

Q. Can you explain to the Court why the company has in its records two accounts entitled "Reserve for Bad Debts"?

A. I imagine, one for circulation and one for advertising.

Q. One for circulation and one for advertising.

Are you familiar with the account called "cuts and mats sold"?

A. Yes, sir.

Q. What are the "mats sold"?

A. If an advertiser wants a mat of an ad that we have

published, we will service him by making a mat and imposing a small charge on it.

Q. I notice, Mr. Adams, from the account that that account runs as high as $150,000 and $160,000 a year, and I was just wondering why such a large number of mats sold.

Is that accountable to just what you have said?

A. The majority of that would be engraving cuts, not mats.

Q. Do you know how the revenue is received from that account or handled as between the different papers?

A. How it is received? I don't quite——

Q. The revenues received from?

A. We have entered a charge against the advertiser accounts and the money is received through the cashier.

[fol. 1032] Q. Do you make any distribution of those revenues as between the morning and Sunday and the evening papers?

A. I believe, Mr. Flurry, that they are taken off the revenues from the departments. In other words, as an illustration, the engraving may be taken off the expenses of the Engraving Department.

Q. What about the mats sold?

A. Well, they will be taken off stereotype.

Q. Do you know whether or not those revenues are distributed on a monthly basis or at the end of the year as annual adjustments?

A. I believe they are taken off, monthly, Mr. Flurry, from what the auditors have told me.

Q. You are not sure about that?

A. I am not too familiar with that detailed part of it.

Q. Now, I note from your records an account entitled "Rebates due Advertisers".

Will you explain that account?

A. That is the same process that I explained a few minutes ago, the difference between the 50- and 100,000-line advertiser.

Q. At the end of your fiscal year, do you make an adjustment to your net profit and loss due to the fact that you owe rebates to advertisers on contracts which are still in effect?

A. Mr. Flurry, I know that something on that order is what takes effect, but I do not keep the general books; but I know that that is approximately what takes effect: that we watch that carefully through our department and know how much rebates. We anticipate them the best we can and [fol. 1033] they are adjusted later.

Q. That would be a proper procedure with reference to income tax reports, would it not?

A. Yes. I am sure it would.

Q. Now, we find an account called "Other Debits".

Do you know what that includes?

A. There are several little miscellaneous items that might be included in "Other Debits"; but to give the exact details, I don't believe I could.

Q. Do you recall whether or not that account is an end of the year adjustment? Or is it a monthly?

A. You mean, if it is handled very similar to the cuts and mats?

Q. To rebates due advertisers which you adjusted at the end of the year? Is it similar to that?

A. Well, the rebates and discounts are reserved for contingencies on the contract. "Other Debits" would be on the left side of the ledger. That would be income.

Q. Now, do you make adjustments for bad debts charged off at the end of the year? Or monthly?

A. We adopted a plan of an arbitrary figure on bad debts and adjusted it at the end of the year.

Q. Do I understand you that you do, in effect, this: You set up a reserve for bad debts and then you adjust that at the end of the year?

A. Yes, sir. We set up a reserve, I believe, each month [fol. 1034] and then close it out at the end of the year.

Q. Now, do you make any entries on depreciation, except as an adjustment, at the end of the year?

A. There again, Mr. Flurry, I wouldn't be able to answer those intimate details of it.

Q. We notice an account, Mr. Adams, that is entitled "Reserve for Doubtful Accounts".

Will you distinguish between that and "Bad Debts"?

A. "Doubtful" is where you may not pay and "Bad Debts" is where you haven't paid. You don't consider him very good on a "Bad Debt". On "Doubtful," you might hold him a while.

Mr. Flurry: You may cross examine.

The Court: We will take a recess until 20 minutes until 4:00.

Mr. Phelps: May we approach the Court, please?

The Court: Yes.

(Bench conference.)

[fol. 1035] Cross examination.

By Mr. Wilson:

Q. Mr. Adams, in testifying for Mr. Flurry I understood you to tell him that the item, "Cuts, Mats and Metals" was distributed back against the expenses of the Department. During the recess I showed you the Haskins & Sells report for 1949, in comparison with 1948, and looking at that, does that refresh your recollection as to how that item, "Cuts, Mats, and Metals Sold" is handled in the records of the company?

A. It is handled as "Operating Revenues, Other."

Q. In other words, it is shown as a lump sum in "Other Operating Revenues?"

A. Yes.

The Court: How was that item broken down? How is it distributed?

Mr. Wilson: Under the heading, "Operating Revenues," it shows——

The Court: Let the witness answer. You can ask him the question.

By Mr. Wilson:

Q. (Handing document to witness) Referring to Government Exhibit 8, Mr. Adams, which is the Haskins & Sells report for 1949, I ask you to look at Schedule 1, which you have before you. You will find at the beginning of that schedule it shows, "Operating Revenues," does it not?

A. Yes, sir.

Q. Then it shows "Advertising" and various sub-heads [fol. 1036] under it: Retail, Classified, General, Comic Section, Roto Magazine, Retail, and General.

A. Yes, sir.

Q. Then the next heading is "Less Discounts and Allowances and Agents' Commissions."

A. Yes, sir.

Q. Then it shows still under "Operating Revenues," "Circulation."

A. Yes, sir.

Q. And that is broken into "Carriers; Country News Dealers, City News Dealers, Country Subscriptions, Office Subscriptions."

The Court: I just wanted to know about that one item: "Mats, Cuts, and Metals."

Mr. Wilson: All right, sir.

Q. Then the last heading under "Operating Revenues" is "Other" is it not?

A. Yes, sir.

Q. That shows one item; "Cuts, Mats and Metals Sold?"

A. Yes, sir.

Q. That is not broken down in the report itself as to what goes to make that up, is it?

A. No, sir.

Q. However, I believe you have a memorandum of the "Miscellaneous Revenues", do you not, that go into that?

The Court: I meant, was any distribution made over the [fol. 1037] various editions?

Mr. Wilson: No, sir. It was shown—I'm sorry; I thought you wanted the other.

The Court: No.

By Mr. Wilson:

Q. That is shown as a lump sum of revenue and is not distributed as between editions of the paper, isn't it.

A. That is right.

Q. Mr. Adams, I note that button in your lapel there. Just what is that button?

A. This is a button made by The Times-Picayune Publishing Company about 1933 when Mr. Coleman was Classified Advertising Manager of the Times-Picayune.

Q. And what does it indicate?

A. Twenty-four hour service.

Q. And by "twenty-four hour service," what was meant?

A. It was meant, in that particular case, twenty-four hour want-ad power of the morning Times-Picayune and the evening States and the Sunday Times-Picayune States, with a clock on it, to indicate "around-the-clock."

Q. Now, in explaining the revenues, you mentioned that the States carriers get credit for some Sunday deliveries. Prior to the time that the Times-Picayune Publishing Company took over the operation of the New Orleans States, did the New Orleans States have a Sunday paper?

A. Yes, sir.

[fol. 1038] Q. And at the same time, the New Orleans States had a Sunday paper, did the Times-Picayune have a Sunday paper?

A. Yes, sir.

Q. What was it known as?

A. "Times-Picayune."

Q. And the New Orleans States was called The New Orleans States?

A. I believe it was called The Daily States, or The New Orleans States.

Q. All right. And after the Times-Picayune commenced operating the Times-Picayune as its morning edition and the New Orleans States as its evening edition, what did you have in the way of a Sunday paper?

A. Times-Picayune-New Orleans States.

Q. Did you have one group of carriers that were handling the Times-Picayune daily? That is, the six-day operation, and another group handling the States, as a six-day operation?

A. Yes, sir.

Q. Well now, how was the Sunday edition carried?

A. Well, if the Times-Picayune carrier was already delivering the Sunday paper there, then that was morning and Sunday.

Q. And what about it if the States carried it?

A. If the States was delivering a daily paper there, and had already obtained a subscription, the States carrier would deliver the Sunday.

[fol. 1039] Q. And as I understand it, the revenues, (in the Circulation Department, now, I am talking about) resulting from any deliveries by States carriers have always been credited to the States?

A. Yes, sir.

Q. And the revenues from deliveries by Times-Picayune carriers have been credited to the Times-Picayune?

A. Yes, sir.

Q. But in the Advertising Department, so far as Sunday lineage goes, nothing is credited to the New Orleans States, is it?

A. The Retail, General, or Classified?

Q. Well, all right; let's take in the Retail. Is there anything credited?

A. No, sir.

Q. In Classfiied Advertising, is any of the Sunday lineage credited to the States?

A. Worked on that arbitrary formula of 80-20, seven days a week: what part of the twenty was the Sunday, that is up for an accountant to figure out.

Q. In other words, on Classified you used an arbitrary 80-20. Am I right?

A. Yes, sir.

Q. And as taken, the classified advertising carried in the Times-Picayune and the classified advertising carried in the States, so far as lineage goes, they would be exactly the same except this small amount of Over-the-River that fell into the States?

[fol. 1040] A. Yes, sir.

The Court: Now, on that classified, you take the seven days: that would include the Sunday.

A. Mondays through Sunday.

The Court: Including the Sunday Picayune and the States, take all the classified and split it up 80-20?

A. Yes, sir.

The Court: That is, all the revenue from classified ads?

A. Yes, sir.

By Mr. Wilson:

Q. Now, in the circulation revenues, we have revenues from Country Carriers. As I understood your testimony, all of the morning and Sunday revenue of the Country Carriers is allocated to the Times-Picayune?

A. Yes, sir.

Q. And only the States, six-day operation, is allocated to the States?

A. Yes, sir.

Q. But these country carriers handle both the States and the Picayune. Am I right?

A. Oh, yes; surely.

Q. In other words, you don't have any separate circulation organization outside of the city itself?

A. No, sir.

Q. And even though a man might be selling all States [fol. 1041] over in Hammond, Louisiana, and selling the Sunday paper along with it, why, all of the Sunday revenue would still be credited to the Times-Picayune, would it not?

A. Yes, sir.

Q. Under the classification of Retail, Display Revenues, I understood you to say that you lump all of the morning and Sunday revenue together and that is credited to the Times-Picayune?

A. Yes, sir.

Q. And I believe only the six-day States is credited to the States?

A. Yes, sir.

Q. And that would be true, would it not, if a man had a contract only in the States and ran his advertising only in the States, during the week, but ran in the Sunday Times-Picayune-New Orleans States?

A. That is right.

Q. In other words, the Sunday revenue would still go to the Times-Picayune?

A. That is right.

Q. This Over-the-River lineage that is included in the States' revenues on classified advertising is a relatively insignificant amount, is it not?

A. A very small portion of revenue.

Q. It is just a little box on one page, ordinarily?

A. Well, sometimes it might be more than a box. It might be several hundred lines, but it is a small portion of the revenue when you are running six and a half pages of advertising when you only have a few hundred lines on one [fol. 1042] page. We consider that an appreciable revenue.

Q. So the fact remains that although you have published, and have published since 1935, approximately precisely the same number of lines in the daily States as you have in the daily Picayune, you have, nevertheless credited the States with only twenty per cent of the seven-day revenue?

A. That is right.

Q. When did you say the unit rate was put into effect on the Times-Picayune-New Orleans States for classified advertising?

A. March 15, 1935.

Q. And when was the unit rate put into effect on the Item-Tribune?

A. In 1924, when the morning Tribune was launched.

Q. And did that remain in effect until the Tribune was discontinued in 1941?

A. Yes, sir; as well as my memory serves me, I believe all the way through.

Q. Mr. Adams, this 80-20 formula was not first adopted as a method of dividing up the classified advertising, was it? Wasn't it originally adopted in connection with the division of expenses a year or so before?

A. Maybe that is why the management adopted it at that time, because some of the expenses had been adopted before, because I had not—I don't recall of an 80-20 formula, except in that type of conference, that had been adopted apparently before expenses and continued in revenue.

[fol. 1043] Q. Actually, that formula for use in connection with your own individual accounts, for your own use there in the Publishing Company, was set up by Mr. Alvin Howard, wasn't it?

A. It was suggested by Mr. Howard and we kept our records accordingly, as well as I recall.

Q. For the most part so far as your records are concerned, anyway, you have continued to keep them along that line, have you not?

A. Yes, sir.

Q. Actually, what your accounting system reflects is the relative position from year to year, isn't it? That is, you can look and see——

A. For comparison purposes.

Q. ——whether you are showing a different figure this year than you showed last year.

A. For comparison purposes; yes, sir.

Q. There was some discussion of rebates to advertisers. Isn't there a counter part to that in the case where an advertiser fails to use his contract amount?

A. Yes, sir.

Q. What is that called?

A. Short rate.

Q. And in that case the advertiser is billed an additional amount is he not?

A. Between the rate paid and the rate earned. If he did not earn the rate we would impose a short rate.

[fol. 1044] Q. And that, from time to time, brings in some income?

A. Yes, sir.

Q. How is that income distributed?

A. On classified it would be set up 80-20. On retail, based on the rates in the contract, and in General, based on the rates in the rate card; and then if there was any allocation since, say February 1st, 1950, it would revert back as a credit.

Q. Mr. Adams, in explaining the rebates and the short rates, you were talking about the contracts with the advertiser. As a matter of fact, those so-called contracts are simply a billing arrangement between The Times-Picayune Publishing Company and the advertiser, are they not?

A. Yes, sir. There is no obligation to publish any specific lineage, but in the event we do that is the rate that we impose.

Q. In other words, you agree with him that you will impose that rate, no higher nor no lower, providing that a specific lineage is used?

A. That is right.

Q. And the advertiser, himself, has no obligation to use that amount of advertising, does he?

A. No, sir.

Q. And that would be true as to all types of contracts? That is, your General, your Classified, and your Retail contracts?

A. That is right.

Mr. Wilson: That is all.

[fol. 1045] Redirect examination.

By Mr. Flurry:

Q. Mr. Adams, before you adopted the unit combination rate on classified in 1935, isn't it true that the rate in the States was lower than the rate in the morning Times-Picayune?

A. Yes, sir.

Q. And at that time the circulation in the States was lower than that of the Times-Picayune?

A. Yes, sir.

Q. Did that have anything to do with the fact that you set the ratio of 20-80 for the division of the revenues received from classified advertising?

A. Mr. Flurry, I could not answer that question. That was the formula adopted at that time. What contributed toward that formula I couldn't recall even all the particulars of it.

Q. Do you recall whether or not the unit combination rate on classified, adopted in 1935, was for the purpose of inducing additional classified advertising in the States?

A. May I have the question again, please?

(The Reporter read the last question.)

A. It was to improve the revenue of the Times-Picayune Publishing Company.

Q. I will ask you to answer the question which I asked you, Mr. Adams.

A. I believe that would create some business for the [fol. 1046] States, but the prime reason was to improve the revenue of The Times-Picayune Publishing Company.

Q. The question I asked you, Mr. Adams, was whether or not the unit combination rate on classified advertising, adopted in 1935, was for the purpose of inducing advertising in the States: classified advertising.

Mr. Wilson: May I have the Reporter read back the question? I didn't understand the question to be what Mr. Flurry said it was. Would you read back his previous question so I can understand it?

(The Reporter read the question, as follows:

"Do you recall whether or not the unit combination rate on classified, adopted in 1935, was for the purpose of inducing additional classified advertising in the States?")

A. It was for the purpose of inducing additional classified advertising in the Times-Picayune and the States, to improve The Times-Picayune Publishing Company's position.

By Mr. Flurry:

Q. Did it result in 1935 in increasing the classified advertising carried in the Times-Picayune morning?

A. I would have to look at the Media Records figures on that, Mr. Flurry. I have forgotten the details of it.

Q. It did result, did it not, Mr. Adams, in bringing the amount of lineage in the States up to the amount of lineage carried in the Times-Picayune?

A. Yes, sir.

Q. I show you Government Exhibit 106-B, Mr. Adams, [fol. 1047] and ask you to refer to the figures for 1934 and 1935, under the columns headed "Times-Picayune, Morning" and "States, Evening."

A. 1934?

Q. Will you read the figures, please?

The Court: What exhibit is that?

A. 106-B.

"Times-Picayune, Morning: 1,344,479 lines, States, Evening: 642,347.

1935: Times-Picayune, Morning, 1,490,316; States, Evening, 1,344,849."

Q. Now, I will ask you to examine the same figures under the same column, or rather the figures under the same column for the year 1936 and state whether or not those figures are practically identical?

A. For the morning Times-Picayune and the evening States, for comparative purposes, they are practically identical.

Q. I ask you, Mr. Adams, if the result shown from the figures which you have just read was the purpose intended to be produced by the unit combination rate?

A. It increased business in the Times-Picayune and New Orleans States and brought revenue, additional revenue, to the Times-Picayune Publishing Company to operate our business.

Mr. Kramer: If the Court please, the Government has never yet, as I recall, in this trial, asked that the Court instruct a witness to give a categorical answer to a question. I think the last question asked can be answered, "Yes," or "No," or "I don't know."

[fol. 1048] Mr. Wilson: Just a moment. I almost objected to that question in the first place. The witness has testified——

The Court: Now, would you mind waiting just a minute and let me hear the question? I am not sure I know the question.

Mr. Flurry: Will you read the question, please, and the answer?

(The Reporter read the last question and answer.)

Mr. Wilson: That seems to me to be a perfectly clear answer.

Mr. Kramer: Our question was "purpose." He talks about results.

Mr. Wilson: If you are going to insist on that, I am going to object to the question because you are asking him to look at some figures on a chart which show results and tell you what the purpose was when he said that he had nothing whatever to do with putting in the unit rate.

Mr. Kramer: Do you know what the purpose was, in adopting——

Mr. Wilson: Are you examining the witness, Mr. Kramer?

Mr. Kramer: Go ahead, Mr. Flurry.

By Mr. Flurry:

Q. Do you know what the purpose of the unit combination rate on classified at the time it was adopted was, Mr. Adams?

Mr. Phelps: If the Court please, I am going to object [fol. 1049] to that question on the grounds there may have been more than one purpose.

The Court: Well now, as I understand this witness' testimony, it was that he had nothing to do with adopting the unit rate in connection with classified advertising. Now, am I correct in that?

A. Yes, sir; except as to the accounting if it, Your Honor.

The Court: I am talking about the adoption of the unit rate.

A. Yes.

The Court: Now, was that rate adopted before the fact of its adoption was communicated to you, or did you participate in the considerations or in the conferences which led to its adoption?

A. My participation in the consideration, or leading to the adoption was on the accounting, credit and collection and office work: details of that kind. It was limited to that scope entirely.

The Court: I think he has answered the question the best he can, under the circumstances. Of course, you say "the result." There may be several results.

Mr. Kramer: If the Court please, the only question I am trying to get to is whether he knows the purpose for which it was adopted. He certainly could say whether he does or not.

The Court: Well, do you know?

A. I gave as practical an answer, sir, as I knew how to give from my point of view, being in the business office.

The Court: As I understand, his answer is that he knows they did it because they thought it was a good thing to do.

[fol. 1050] A. Right.

The Court: That is what it amounts to. If they had not thought it was a good thing to do they would not have done it. Is that it?

A. Yes, sir.

The Court: As far as the details and the various considerations that entered into it, you are not familiar with those?

A. No, sir.

By Mr. Flurry:

Q. Do you know who did make the decision and who was in the conferences in the making of that decision on the adoption of the classified unit combination rate?

A. I was not there on a final decision and I could not answer that. I do not know.

Q. Were you there on any other conferences other than the final conference?

A. There may have been one or two, as to the effect on the credit and collection, accounting, before the final. I do not recall the particulars though.

Q. Do you know who was present at those conferences?

A. Well, the last one I recall, on the 80-20 formula, was Mr. Nicholson and Mr. Tims, and Mr. Howard.

Q. I'm sorry to interrupt you, Mr. Adams; I am referring to the conferences on the adoption of the rate: not the conferences on fixing the formula.

A. No, sir; I do not recall.

[fol. 1051] Q. You don't recall knowing anyone who attended such a conference on the making of the rate itself?

A. No, sir; I was not there at that time.

[fol. 1052] Q. Who was the Manager of the Classified Advertising Department just previous to the adoption of the unit combination rate?

A. Mr. A. J. Combe, the late Mr. A. J. Combe.

Q. He is now deceased?

A. Yes, sir.

Q. Which paper did he represent, or did he represent both the Times-Picayune and the Evening States.

A. He represented both. He was Classified Advertising Manager.

Q. For both papers?

A. Yes, sir.

Q. Was that true in 1934?

A. Yes, sir.

Q. Who was the Assistant Manager of the Classified Advertising Department at that time, 1934?

A. I don't believe we had one then. I don't recall.

Q. Who would know the facts with reference to these conferences leading up to the adoption of unit combination classified rate other than Mr. Tims?

Mr. Wilson: If the Court please, the witness has testified that he wasn't there, and he doesn't know, and it seems to me that this line of examination has gone a little far to ask him now who would know about it other than Mr. Tims. I must object to the question.

The Court: I think the question, if rephrased, would be proper. Who, in his estimation, who he thinks should know.

[fol. 1053] By Mr. Flurry:

Q. Who, in your opinion, attended these conferences with respect to the adoption of the unit combination rate on classified advertising in 1935?

A. Mr. Tims and Mr. Combe.

Q. Would there be any others?

A. I imagine Mr. L. K. Nicholson came in there for final approval of it, but that would be the only two that I could say definitely would come in on conferences of that kind, in the early stages of it.

The Court: Is it one of your duties to assist in fixing advertising rates?

A. No, sir.

The Court: You had nothing to do with that?

A. No, sir, I merely set them in the accounting books.

The Court: You are the Accountant?

A. Yes, sir.

Mr. Kramer: Did the Court mean by that question the rates to be on the cards or the rates to be charged the advertisers?

The Court: Is there a difference?

Mr. Kramer: Yes, Your Honor. We have documents from the files of the Times-Picayune Publishing Company which are not in Court, but which we will produce tomorrow morning, showing that this witness does frequently determine or at least is consulted and his opinion is very highly regarded as to what rate a particular advertiser is to get when there is a dispute, any doubt. At least, that is my [fol. 1054] understanding.

The Court: I had in mind the fixing of the rates as appear on the cards. We are talking here about two things: we are talking about putting into effect of the unit rate and also this arbitrary 80-20 charge. Those are two separate and distinct things, and they have been confusing at times.

Mr. Wilson: I will be glad—I will admit that this man is the Credit Manager, and he is the principal one on interpreting the application of a rate after the rates are established.

Mr. Kramer: That is right. Well, there is no dispute between us then.

By Mr. Flurry:

Q. Mr. Adams, in interpreting unit combination rate adopted in 1935, what effect did you consider that the unit combination rate would have upon the rate which was previously in effect for classified advertising in the States only?

Mr. Wilson: Well, if the Court please, I cannot understand that question.

The Court: Let us see if the witness can.

A. I don't believe I understand the point of the question or get it clear in my mind, Mr. Flurry.

Mr. Flurry: Read the question, please.

(Question read by reporter.)

Mr. Flurry: I will break that up into several questions, Your Honor.

[fol. 1055] By Mr. Flurry:

Q. Prior to the adoption of the unit combination rate, Mr. Adams, you had in effect for classified advertising in the States a separate rate, did you not?

A. Yes, sir.

Q. And you also had a separate rate for advertising in the morning papers?

A. Yes, sir. Then we had a combination rate in effect then.

Q. Now in your interpretation of the combination rate which was adopted in 1935, what effect did you consider that that had upon any change in the rate which had heretofore been charged for the same lineage in the States?

A. I don't know. I have forgotten the rates as they were then. I am not clear on answering your question.

Q. I will help you out on that, Mr. Adams. I will ask you to examine Government Exhibit 19 and state what the rate was on classified advertising prior to the unit combination rate.

A. The classified rate would be morning, twenty-two, evening, fifteen, Sunday, thirty. That is the only two shown on that.

Q. Now, I show you Government Exhibit 20——

The Court: Just a minute, before you leave 19, doesn't that show combination rates listed under general advertising also a part of classified?

A. It is not under that exact classification, Your Honor.

"Combination rates listed under general advertising, also [fol. 1056] apply to classified advertising."

The Court: What is the combination rate under general advertising?

A. It would be thirty cents, Times-Picayune-States, morning and evening, thirty cents.

By Mr. Flurry:

Q. I now refer you to Government Exhibit 20 and ask you what was the unit combination rate for the morning and evening on classified after the adoption of the unit combination rate?

A. Thirty cents, the same as it was in August, '35.

Q. Now, Mr. Adams, at that time, namely August, 1935, how did you distribute revenues received from advertising in the general advertising classification where there was an optional combination rate for the morning and evening?

A. By breaking the rate down into separate parts for the Times-Picayune and States.

Q. How did you break that down?

A. Well, as I recall, only circulation, A. B. C., without getting into halves and quarters, if we could avoid it.

Q. Now, you adopted the same unit combination rate for classified as you had theretofore had for general, did you not?

A. In 1935?

Q. Yes.

A. Yes, sir.

Q. Now, I ask you why you didn't use the same basis for [fol. 1057] the breakdown of your unit combination classified rate as you did for your optional combination general rate as between the morning and the evening paper?

A. I don't recall making any recommendation of the change and the management didn't tell me to change it, so I continued on the same basis.

Q. And at the same time you adopted this 20-80 formula with reference to classified?

A. Yes, sir.

Q. Was it discussed at that time and commonly known that, in the opinion of those charged with the responsibility of making a decision as to the formula, that a 20-80 basis was a sound and fair basis of distribution of the revenues?

A. I don't recall that the words "sound and fair" were used. I recall that the word was "arbitrary".

Q. Now, to be sure that the record shows this straight, Mr. Adams, on general advertising, I believe you stated in answer to Mr. Wilson's question that if an advertiser had a contract for a certain amount of general advertising, and did not carry that amount of advertising, that he was charged with the rate which applied to advertising which he actually carried?

A. Yes, sir.

Q. Now, when those charges at the increased rate were

charged back, were they charged back on the same formula as that upon which you explained that the revenues were distributed as to general advertising?

[fol. 1058] A. Yes, sir.

Q. In other words, a particular advertiser would be charged back, and that charge-back would be distributed as between the papers upon whichever one of the three formulae which you mentioned applied to particular advertiser's account?

A. What year, Mr. Flurry?

Q. In 1950.

A. Yes, sir.

Q. In other words, if it was morning and Sunday, your formula for morning and Sunday applied on the charge-back?

A. Yes, sir.

Q. If it was morning and evening, that formula applied?

A. Yes, sir.

[fol. 1059] Recross examination.

By Mr. Wilson.

Q. Mr. Adams, at the time that the unit rate on classified advertising was adopted by the Times-Picayune-New Orleans States, or for the Times-Picayune-New Orleans States, there was a unit rate in effect on the Tribune and Item, was there not?

A. Yes, sir.

Q. You mentioned to Mr. Flurry that your concern with the change of the unit rate was primarily with the administrative end of it; that is, the handling of the billing and that part of it.

Is that right?

A. Yes, sir. That is right.

Q. What were your problems? Why was that significant in connection with classified advertising?

A. We have a multiplicity of transactions and you have to work up a system that will handle that volume, twenty four hours a day, seven days a week, and that was a pretty good size assignment, I thought.

Q. Can you give me any rough estimate of the number of

classified advertisements that will appear in? Well, first the number that will appear on a page of classified advertising, just roughly how many?

A. About 400 a page.

Q. And what will it be over a period of six months or the last six months, say? About what would be your average daily number of pages of classified advertising in the morn-
[fol.1060] ing edition and the evening edition for six days?

A. About six or six and a half pages.

Q. So, you are running somewhere around 2500 advertisements twice a day every day, are you not?

A. Yes, sir.

Q. And you are running it through some eleven editions of the paper, are you not?

A. Yes, sir.

Q. In that connection, have you had occasion to make some study of the amount of work that goes on from the time a classified advertisement comes into the department or into the publishing company until you get the final billing out?

A. Yes, sir. That study is continuous.

Q. And, at the request of counsel, have you directed the preparation of a chart designed to demonstrate the number of operations through which all of that must go?

Mr. Flurry: We object to that, Your Honor.

Mr. Wilson: What are the grounds?

Mr. Flurry: It seems to me it is going entirely outside the scope of the examination by the Government and is purely a matter of defense.

Mr. Wilson: They asked him. I didn't open this up and had no intention of bringing it in until Mr. Flurry got into the question of why he was interested in it and what were the administrative problems.

Mr. Flurry: I don't recall anything about administrative
[fol. 1061] problems.

He asked him what the purpose of the combination rate was and he said he didn't know and wasn't responsible for adopting it.

The Court: Does this have anything to do with the conferences concerning this chart?

Mr. Wilson: He says that the studies have been going on constantly all the time in regard to it.

Now, of course, the chart wasn't made before the conferences, because we have to have something in a form that is presentable; but here is a man that knows. That is what he had in mind at the time and he was talking about the administrative end, the administrative end in connection with it.

The Court: I understood his testimony simply to be as to what his functions were, what phase of the business his functions covered.

Mr. Wilson: That is right. So I understood it; and his function was to bring before the management the administrative problems in connection with the handling of classified advertising.

What were those problems? Here they are.

Mr. Kramer: We want to make it clear that we are only objecting on the ground that it is improper at this time.

The Court: I will sustain the objection.

By Mr. Wilson:

Q. Mr. Adams, in handling classified advertising, do you have the advertisement in one day and out the next? Or [fol. 1061] is there considerable continuity in it? That is, will it run for most of them over several days' time?

A. We have a lot of one-time copy and we have a lot that will run over several days' time.

Q. And when they run over several days' time, they run in both the morning and evening edition and they run on consecutive days, do they not?

A. Yes, sir.

Q. And those consecutive days may include Sunday, may they not?

A. Yes, sir.

Q. So, an advertiser may start a classified ad or a group of classified ads on Thursday and run them through until the next Thursday?

A. Yes, sir.

Q. Does your rate card take care of that situation? That is, does it give discounts for multiple insertions?

A. Yes, sir.

Q. And that makes it more attractive to carry them straight through?

A. Yes, sir.

Mr. Wilson: That is all.

Mr. Flurry: That is all, Mr. Adams.

(Witness excused.)

Mr. Flurry: May it please the Court, Mr. Wilson, if the [fol. 1063] Court will recall, stated that at the end of the examination of Mr. Frank of the FBI he might have a few other questions.

I conferred with Mr. Wilson and he stated that he did have several other questions; so, we have asked Mr. Frank to come back this afternoon and we would like to dispose of him.

The Court: All right.

Mr. Wilson: I only have one or two questions in connection with the exhibits that were brought in here and I think we will have those cleared up.

LAWRENCE J. FRANK, JR., resumed the stand and testified further as follows:

Cross examination (Continued.)

By Mr. Wilson:

Q. Mr. Frank, I was handed here this morning a sheet showing the revenues for the years 1947 through 1950, inclusive.

Did you take this information from the books?

(Document handed to the witness.)

A. Unless this was in the photostats, we didn't obtain any transcript of any revenue items at all. Unless this was contained in the photostats, we didn't obtain it.

Q. So, you made no effort to determine the handling of any of the miscellaneous revenues of the paper?

A. No, sir.

Q. In connection with the treatment of paper purchased, that is, newsprint purchased, did you make any credit or [fol. 1064] did you find any credits for either waste paper sales or credits for claims which the company had against the newsprint companies?

A. No, we didn't go into that. I know that they did keep records of spoilage, if that is what you have reference to; and, in making the tabulations, I believe they told us that approximately 90 per cent of the waste paper was wrapper waste and approximately 10 percent was office waste.

Q. Well now, that is information that you got with respect to the mail room and to the Maintenance Department, is it not?

There is waste paper. There is a great deal of paper. You may not call it waste paper in the sense that you find it in the waste basket, but paper that is sold for wrapping poor-boy sandwiches and that sort of thing. That is quite a considerable item. It amounts to some $60,000.

Did you find that item?

A. I would have to look at those work papers, if I may, please.

The tabulation that we took on that was from records that were provided us and they broke it down into pounds of white waste, transit, core and mixed and we only took the quantities and we didn't deal in any dollar values on that.

Q. And I understand that that is sold to a waste paper dealer here by the name of Phillips and also considerable amounts to small printing plants; so, you didn't take those revenues, at all.

A. We didn't go into the disposition that was made of it, no, sir.

[fol. 1065] Q. And so you don't know how that was treated by the company?

A. No, sir.

Q. Mr. Frank, I assume that the reason you did not go into the revenue figures was that you were only instructed to go into the operating expenses.

Is that right?

A. We were instructed to obtain the number of employees, the regular hours worked, the overtime or premium hours worked, broken down by departments.

Q. Well, were you instructed as to how to obtain them? Whether to obtain them just by pay roll or by actually trying to find out who was working for whom?

A. We were not instructed in the procedure that we should follow; but, in contacting them, we explained to Mr. Tims and Mr. Lagarde, the auditor, the information that we were interested in, and they provided the pay roll records from which we took this information.

Q. Well, they provided you with the pay roll records which merely showed how the various employees were charged on their books, that is, whether the employees were charged to one edition or the other edition, didn't they? That is, they didn't give you any information about who was doing what kind of work or whether they were working for both, or what. They merely told you which payroll they were on or told you to which edition that pay roll was charged.

Is that right?

A. Well, I don't know that they specified the edition. [fol. 1066] They specified the paper. In other words, it was broken down as to the New Orleans States and the Times-Picayune.

Q. And so you didn't know whether they were charging them to the evening edition or the morning edition? You knew whether they were charging them to the Times-Picayune or the New Orleans States?

Isn't that your answer?

A. We took it by newspaper, yes, sir.

Q. You took it by names?

A. Times-Picayune or New Orleans States.

Q. And you took your pay rolls purely arbitrarily, did you not? That is, you took a whole pay roll, regardless? That is, you took your day pay roll and charged it to one paper and your night pay roll and charged it to the other paper, provided that that was the way that they were charging it in their own books?

A. Yes, sir. They did have some breakdown in some of the pay rolls as between the Times-Picayune and the States.

I believe we made reference the other day to the composing room. As I recall, there were eleven different operations in the composing room, eight of which were charged to the States and the same eight, of course, were charged to the Times-Picayune.

There were three distinct operations, monotype, remelt and apprenticed employees, that were split, 50-50, between the Times-Picayune and the New Orleans States.

Q. That is the charge on their books?

A. The labor charge, yes, sir.

[fol. 1067] Q. But, so far as you were concerned, they could have had fifteen master printers down there charged.

If there were fifteen master printers, only, on the Times-Picayune roll and fifteen apprentices on the States' roll, you would have still charged them fifteen to one and fifteen to the other and gone by man hours, wouldn't you?

A. Yes, sir.

Q. So, it was just whatever arrangement they had on their own books, you followed that arrangement?

A. Yes, sir.

Q. Did you have any written instructions as to how you were to obtain the information over there?

A. We had instructions as to what we were to obtain, but no instructions were given us as to how to obtain it.

Q. Would you produce for me the instructions as to what you were to obtain?

A. I don't have them with me at this time.

Q. That is all right. Just let counsel produce them, please.

Mr. Kramer: Does Your Honor direct us to produce them?

The Court: I think he has testified. I don't know the purpose of it.

Mr. Wilson: Well, my purpose is this: I think counsel will agree with me. If they won't, I have certainly other ways of showing that as early as December in a conference in our offices in Kansas City counsel were told that these books

would not accurately reflect anything in the way of either [fol. 1068] revenues or expenses.

Mr. Kramer: That was told us, Your Honor. That was told us.

The Court: I think that was developed at one of the pre-trial conferences, too.

Mr. Wilson: At the pre-trial conferences and on the depositions.

Now, the witness has taken quite a bit of information here which the Government knew was not satisfactory information from which to prepare to draw any conclusions.

The next witness that is about to go on, as I understand it, has taken this information and built on it to draw another set of conclusions; and, from those conclusions, has drawn a bunch of charts that they are going to put in evidence.

So, we are not only perpetuating the errors, but we are multiplying them in, I would say, a geometric proportion as we go, and, for that reason, I would like the record to show that there was no attempt here to go into the revenues. There was no attempt to go into man hours. He just had the flat instructions to go over there and pick some figures off the books, knowing that those books would not properly reflect the true picture within the publishing company.

Mr. Kramer: Well, I am still wondering if we are going to be required to produce this.

This always raises, as Your Honor knows, this very serious problem which the Attorney General and the Deputy [fol. 1069] Attorney General have been so strict about, about disclosing memorandum to the FBI.

Personally, I would love to produce it.

The Court: Well, is this a report of the FBI?

Mr. Kramer: No. It is a memorandum to them.

We will telephone Washington and advise Your Honor in the morning what we are permitted to do.

The Court: Very well.

Mr. Wilson: I have no further questions, Mr. Frank.

Mr. Kramer: Just a minute, Mr. Frank.

Mr. Flurry: I have one question, Mr. Frank.

Redirect examination.

By Mr. Flurry:

Q. From the time you were engaged in this work over at the offices of The Times-Picayune Publishing Company and in your contacts with them, did you ever hear them refer or any of them refer to the Times-Picayune, morning, and the States, evening, as separate editions of one newspaper?

Mr. Wilson: I object to the question. It makes no difference what this witness heard them referred to as over there while he was around the paper. It is absolutely immaterial and irrelevant.

The Court: I agree. I think so.

I will sustain the objection.

Mr. Flurry: That is all.

(Witness excused.)

[fol. 1070] COLLOQUY BETWEEN COURT AND COUNSEL

The Court: I have been informed by the Marshal that the witness, Henry Sheets, is not yet in condition to testify.

Now, it is my view that both sides are entitled to have his testimony and that he should be required to appear in such condition that he can testify; so, I am going to see that he is held until tomorrow and that will give him an opportunity to sober up.

Mr. Flurry: I wholly concur in Your Honor's action.

The Court: We will continue this case until tomorrow morning at 10:00 o'clock.

Mr. Wilson: I take it that was the witness, Henry Sheets, summoned by the Government.

The Court: That is right.

Mr. Phelps: May I confer with Your Honor a moment?

The Court: All right.

(Bench conference.)

(Mr. Henry Sheets was escorted into the court room.)

The Court: Mr. Sheets, you were subpoenaed to be here on the 3d day of May.

Mr. Sheets: And postponed until the 7th.

The Court: And subsequently, you received a letter telling you to come here yesterday.

Mr. Sheets: That is right, the 7th.

The Court: You didn't do that.

Mr. Sheets: Well, Your Honor, I just couldn't get here. That was all.

[fol. 1071] The Court: I understand. I know why you didn't get here, too. The Court had the Marshall investigate and found out that you were intoxicated yesterday.

Mr. Sheets: That is right. I am not lying. That is correct. That is a fact.

The Court: You came to Court in the same condition today. You have been found in contempt of Court. You are in contempt, not only for your condition today, but because you failed to appear yesterday, as you should have. Both sides are entitled to have you as a witness or have the benefit of your testimony, at least.

The next time you get a subpoena to come to Court, you keep yourself in a condition to answer the subpoena.

Mr. Sheets: Thank you, sir.

The Court: The Court sentences you to custody of the Marshall, the United States Marshall for this District, for a period of twenty-four hours, in prison for twenty-four hours.

Now, that will also insure that you will be in condition to testify tomorrow.

Mr. Sheets: All right.

The Court: The Court will stand recessed.

(Whereupon, at 5:00 o'clock, p. m., Tuesday, May 8, 1951; a recess was taken until Wednesday, May 9, 1951, at 10:00 o'clock a. m.)

[fol. 1072] PROCEEDINGS OF MAY 9, 1951

(The trial was resumed, pursuant to adjournment, on Wednesday, May 9, 1951, at 10:00 o'clock, a. m.)

Mr. Kramer: Just before we rose, at the close of the session yesterday we were requested by counsel for defendants to produce the written instructions given by the

Antitrust Division to the Special Agent in Charge of the New Orleans Office of the Federal Bureau of Investigation regarding an investigation of the books and records of the Times-Picayune Publishing Company which the Antitrust Division requested the Federal Bureau to make. I am now pleased to hand a copy of that document to counsel for defendants.

I have been informed, if the Court please, by counsel for defendants, this morning, that they will not be able to stipulate the facts or the testimony of the man from Standard Rate & Data whom we proposed to call. Therefore, it will be necessary to call that witness, and that raises the question when to call him. I, therefore, since he lives in Chicago, throw myself upon Your Honor's mercy, for such advice as you can give us, as to when we should call him. He is a rebuttal witness. I have no idea how long the defense will take. Perhaps the defendants can indicate, so we can fix some date in the motion and order which I am about to present to Your Honor.

The Court: He will be a rebuttal witness, you say?

Mr. Kramer: Yes. They have announced that they intend to introduce some figures through Miss Jean Ingram. We propose to introduce some counter material through [fol. 1073] another witness, if they introduce that. Of course, if they do not offer that I suppose we could not offer ours, but they have stated they intend to, so we are left with no alternative.

Mr. Wilson: If the Court please, might I suggest: this witness is in Chicago, and as I recall, the Panama leaves there about five in the evening and gets in here about nine-thirty in the morning. I should think the gentleman could hold himself available for a telephone call and could get here over night. I wouldn't think it would be any great problem. Whether we use the figures or don't is something we will have to decide when we get into our own case.

The Court: It seems to me it would be virtually impossible, at this point, to say when.

Mr. Kramer: I did not intend to fix the date, but I wanted some indication, Your Honor. Is the defense going to last a week, or a half week?

Mr. Wilson: When you get to the difference between a week and a half week, I just can't help you out there.

The Court: I think arrangements could be made, as counsel suggests, with this witness to hold himself available and leave there on, say, twenty-four hours notice.

Mr. Kramer: Then we will assume that he will go on next Monday, and keep extending the date if that is not all right.

The Court: I think that is a good idea.

Mr. Kramer: That will be the 14th.

I, therefore, now hand to Your Honor the necessary [fol. 1074] motion and order to permit the subpoena to issue to this gentleman, with copies to counsel for the defendant. (Document handed to the Court and counsel.)

I will have to have it back. I see that it requires a sworn affidavit, unless counsel will waive it.

Mr. Wilson: We will waive the sworn affidavit.

Mr. Phelps: We will waive that, if the Court will.

Mr. Kramer: If the Court will.

The Court: (Having signed the order.) I have signed it.

[fol. 1075] Mr. Kramer: Mr. Ward, please.

JOSEPH A. WARD, a witness called by and on behalf of the Government, being first sworn, was examined and testified as follows:

Direct examination.

By Mr. Kramer:

Q. What is your full name?

A. Joseph A. Ward.

Q. W-a-r-d?

A. That is right.

Q. Where do you live, Mr. Ward?

A. I live in New Orleans.

Q. Louisiana?

A. Louisiana.

Q. And where do you work?

A. I am a resident partner for Ernst & Ernst in the New Orleans office.

Q. How long have you been associated with Ernst & Ernst?

A. Since January, 1927.

Q. How long have you been associated with them in the New Orleans office of Ernst & Ernst?

A. Since September, 1950.

Q. Were you served with a subpoena duces tecum yesterday?

A. Yes, sir.

Q. Do you have a copy of it with you?

[fol. 1076] A. Yes, sir.

Q. May I see it, please.

(Document handed to Mr. Kramer.)

Q. (Continuing.) This subpoena, Mr. Ward, called upon you to produce the original or one copy of each survey made by Ernst & Ernst or by anyone acting for Ernst & Ernst since 1933, concerning the circulation of the Times-Picayune, morning, the New Orleans States, evening, and/or the Times-Picayune-New Orleans States, Sunday, all published by The Times-Picayune Publishing Company, New Orleans, Louisiana.

Can you tell me whether or not you found any such surveys in the files of Ernst & Ernst?

A. According to our signed records, there were two surveys made, one in 1934 and one in 1940.

Q. Which one have you found?

A. 1940.

Q. Do you have it with you?

A. Yes, sir.

Q. May I have it, please?

(Document handed to Mr. Kramer.)

Q. (Continuing.) Did you retain a copy of this in your records this morning? Or is this the only copy you have?

A. No. We have a copy in our records.

Q. And we do not have to furnish you with a photostat, then?

A. No.

[fol. 1077] Mr. Kramer: If the Court please, we already marked our exhibits on accounting, so I will have to number

this "G-141". Now, 127 to 140 are being offered through Mr. Houghton.

The Court: 141?

Mr. Kramer: This will be 141.

(The document referred to was marked "G-141" for identification.)

Q. Mr. Ward, I hand you a document marked for identification "G-141", and ask you if this is a document taken from the files of Ernst & Ernst in New Orleans, Louisiana?

A. It is.

Mr. Kramer: I offer "G-141" in evidence, if the Court please.

The Court: It will be admitted.

(The document marked "G-141" for identification, was received in evidence.)

(Mr. Kramer read Exhibit 141.)

Mr. Kramer: You may cross-examine.

Cross-examination.

By Mr. Wilson:

Q. Mr. Ward, am I correct that this was made from the A. B. C. lists, kept by the paper, that is, the Audit Bureau of Circulation list, kept by the paper?

A. Well, I should explain. As I said, I came to New Orleans last September, and the first I knew of our partici- [fol. 1078] pation in this was yesterday afternoon, and, frankly, I am not familiar with the details as to how those figures were worked up.

Q. In other words, all you know is that——

A. This is a copy of——

Q. Something you found in the files?

A. That is right. And we do have our working papers on it, but personally I am not familiar with how they were determined.

Q. Well, are you sufficiently familiar with local geography to tell me whether these towns that Mr. Kramer read off are local suburbs of the City of New Orleans? Ames, Villerie, Chalmette——

A. No, frankly, I am not.

The Court: The Court will take judicial notice of the fact that they are suburbs of the City.

Mr. Wilson: Well, the Court is in better shape than I am on that. I have no further questions. He doesn't know anything about it.

(Witness excused.)

[fol. 1079] FRANK C. ALLEN, a witness called by and on behalf of the Government, after being sworn, was examined and testified as follows:

Direct examination.

By Mr. Kramer:

Q. Please state your name.
A. Frank C. Allen.
Q. Where do you live, Mr. Allen?
A. 414 Fairway Drive, New Orleans.
Q. Where do you work?
A. New Orleans States.
Q. The New Orleans States?
A. Yes.
Q. That is a newspaper published by The Times-Picayune Publishing Company?
A. Yes, sir.
Q. What position do you hold there?
A. Managing Editor.

Mr. Kramer: I am calling this witness, if Your Honor please, pursuant to provisions of 43(b).

The Court: All right.

By Mr. Kramer:

Q. How long have you held the position of Managing Editor of the New Orleans States?
A. Since 1945.

[fol. 1080] Q. What position did you hold—strike that. We had better start at the beginning. When did you first come with The Times-Picayune Publishing Company?

A. I first came with The Times-Picayune Publishing Company in 1929.

Q. And what positions have you held since then?

A. I was a reporter for the Times-Picayune until about 1935 or '36, then I was City Editor of the Times-Picayune until 1940.

Q. What position did you hold from 1940 to date?

A. I left the Times-Picayune Publishing Company then and was gone until May, 1942.

Q. Were you employed in the newspaper industry during the interval?

A. Yes, sir.

Q. Here in New Orleans?

A. No, sir, in Mississippi.

Q. And you came back in 1942 in what position?

A. As City Editor of the States.

Q. When did you become Managing Editor of the States?

A. I became Acting Manager Editor in October of 1942.

Q. During the period when you were with The Times-Picayune Publishing Company, to the best of your knowledge, has that Company ever inserted in its newspaper, either in its news columns or its advertising columns, any false statements, to the best of your knowledge?

A. No, sir.

[fol. 1081] Q. Is there rivalry, and competitive spirit, would you say, between the staff of the Times-Picayune and that of the New Orleans States?

A. Well, to a certain extent, but there is also cooperation between the two staffs.

Q. That is, would it be rivalry or competition depending upon the issue involved?

A. Depending on what is involved. If we have something that we know our competitor has, for instance, that is in the morning paper, they would tell us about it, and if we had something that we knew was going to get out before they published again, we would tell them about it on the same basis.

Q. Those are occasions when there is not rivalry and competition?

A. No, I was describing when there would be. That is not frequent, but it does happen.

Q. Do you know anything about whether there is competition between the two newspapers in the advertising end of it?

A. I am not familiar with the advertising end.

Q. You are not familiar with that. Has there been any change during your association with The Times-Picayune Publishing Company in this question of competition and rivalry, or has it always been about the same, whatever it has been?

A. I don't think there has been any material change, no, sir.

Q. You don't happen to remember when, in 1940, you left [fol. 1082] for that temporary period, do you?

A. I think it was January, I am not positive. January or February.

Q. Well, perhaps I am showing you something then that you have never seen before?

A. That may be true.

Q. I have here for inspection by counsel for the defendants, if they wish to verify the statement I am about to make in offering "G-142", that it is a photograph——

Mr. Wilson: I would prefer that you put it in through the witness rather than testify yourself, Mr. Kramer.

The Court: The witness can step down and look at it.

(Witness doing so.)

By Mr. Kramer:

Q. Is "G-142", to the best of your eyesight, a photograph of a page from the New Orleans States for August 13, 1940?

A. I would say that it is, yes.

Mr. Kramer: Will you resume the stand, please, Sir?

(Witness resumed the stand.)

A. I would like to make one correction there, though, in dates. I think it was in 1941 that I left the Times-Picayune rather than in 1940.

Q. Thank you very much. Do you have any recollection of this thing?

A. I do not, no, sir. I mean there has been so many [fol. 1083] things in the meantime that I just don't recall it.

Q. Would it have been a part of your duties to pass on an advertisement like this in the States?

A. No, sir, it would not. I was not with the States at that time.

Q. You were with the Times-Picayune?

A. Yes, sir.

Q. I understood that the Times-Picayune carried the same ad.

A. That may be true. I don't know.

Q. But even if it did, you wouldn't have been consulted about it?

A. No, sir.

Mr. Kramer: I offer Government Exhibit 142 in evidence, if the Court please.

Mr. Wilson: That is a photostat of this page?

Mr. Kramer: Yes.

Mr. Wilson: And this page is taken from a volume of newspapers which were taken from the New Orleans States for the year 1942, is it?

Mr. Kramer: I haven't looked at it. It seems to be 1940.

Mr. Wilson: This was produced from the files of the Item Company?

Mr. Kramer: I got it from the files of the Item.

[fol. 1084] The Court: It will be admitted.

(The document marked "G-142" for identification, was received in evidence.)

(Mr. Kramer read Government Exhibit 142.)

The Court: Are you reading from the ad or is that a comment?

Mr. Kramer: I am reading from the ad. Did I hand Your Honor a copy?

The Court: No, I thought you were making some preliminary remarks to the reading of the ad.

Mr. Kramer: Excuse me, Sir.

(Mr. Kramer read Government Exhibit 142.)

By Mr. Kramer:

Q. Mr. Allen, were you familiar with or did you ever hear of survey by Ernst & Ernst until you came into the Court Room this morning, or had you known of it?

A. Well, I had read in the paper about it. There was some reference to it in the testimony yesterday.

Q. I meant before the suit started?

A. No, sir. I wouldn't have had any occasion to know about it at that time.

Q. Now, I hand you Defendants' Exhibit 11, and I notice on there that the States' City Room, a piece of area marked "States' City Room"—can you tell the Court whether or not that room is used exclusively for States' City Editors or City people?

[fol. 1085] A. It is not, no, sir.

Q. Who else is in there?

A. Well, there is no barrier between the two departments, no actual barriers between the members of the staff.

Mr. Wilson: Would the witness indicate which two departments he is speaking of?

A. The Times' City Room and the States' City Room.

Q. In other words, the exhibit indicates a barrier, but it is in error?

A. It is all one room, no barrier. Frequently, members of the staff of the Times-Picayune will use the facilities of what is termed the States' City Room on the other side of the house, and the members of the States' staff might move over into the area designated Times-Picayune City Room.

Q. Is this line on "D-11" separating the T-P City Room from the States' City Room on the chart, now is that line roughly the point in this large room at which—on the one side of which generally sit the States people and on the other side, sit the T-P people?

A. This is roughly the area that is used for the States people, that is correct, but, I repeat, there is nothing to indicate any line in there.

Q. Did you have anything to do with making up this chart?

A. No, sir.

Q. Now, next to the States' City Room, I see the States' Society Room. What does that mean?

[fol. 1086] A. We have two society editors, and they have a separate office. It adjoins what you call the City Room.

Q. The States' Society Editors are different than the T-P Society Editors?

A. Yes, sir.

Q. And the T-P Society Editors, on Chart "D-11", are three or four rooms apart, is that it?

A. That is correct.

[fol. 1087] Q. I notice here a space marked "States Editorial" on D-11 and then one marked "T-P Editorial".

Will you tell me what these are.

A. These are the offices of the editorial writers.

Q. For the States?

A. This (indicating) is for the States and the "T-P Editorial" is for the Times-Picayune editorial writers.

Q. And they are separated by a few offices?

A. By a few offices down the hall, yes.

Mr. Kramer: You may cross examine.

Cross examination.

By Mr. Phelps:

Q. Mr. Allen, you were asked concerning Exhibit D-11 about the rooms designated or the spaces designated as "States Editorial" and "T-P Editorial".

Would you explain to the Court who occupies those spaces and what their dutes are.

A. You mean by name?

Q. Please.

A. The "States Editorial" are the offices occupied by Mr. Walter Valois, who is associate editor and who writes editorials;——

The Court: Spell that name.

A. V-a-l-o-i-s.

——Mr. Carl Corbin, who is a vice president and director of The Times-Picayune Publishing Company and an

[fol. 1088] editorial writer for the States; and Mr. Russell Kintzley, who is an editorial writer for the New Orleans States.

Then, I see you have a partition in this. Do you want me to explain that, too?

By Mr. Phelps:

Q. I think just the areas that I designated. I believe the term I used is "States Editorial". You can include both sides of that space, if you will.

A. Well, I was going to explain that, also, in that part of that same office is a cartoonist, Mr. John Chase, who draws the daily cartoon for the States and a cartoon for the Sunday paper, and Mr. Dufour. He writes a daily column for the States and a column for the Sunday Times-Picayune-States.

Now, that is all in that area; and, over in the "Times-Picayune Editorial," you have Mr. Mat Gray, who is an associate editor and writes editorials.

You have Mr. Harold McCall, editorial writer, Mr. William Darling, an editorial writer, and Mr. Maurice Needham, who is also an editorial writer.

Q. Would you tell us whether or not those editorial writers contribute to more than one edition of the three editions published by The Times-Picayune Publishing Company?

A. Mr. Dufour does contribute to the Times-Picayune-New Orleans States on Sunday, in addition to the States. Mr. Chase contributes to the Times-Picayune, States and Sunday cartoon; and, of course, the editorial writers for [fol. 1089] the Times-Picayune write for the weekly and Sunday.

Q. Does it ever happen that an editorial which appears in the morning edition or in the afternoon edition is reprinted in the other edition?

A, It does happen, occasionally, but not frequently.

Mr. Kramer: I didn't hear the end of you answer.

A. I say: It does happen occasionally.

Mr. Kramer: Didn't you add something?

A. Yes, I said it is not frequent.

By Mr. Phelps:

Q. Do the editorial writers on the States, as a group, make any contribution to the Sunday edition?

A. They do. They produce a page, one page, a full page in the Sunday edition. That includes some of our syndicated columns that are published in the States. It includes Mr. Dufour's column; it includes Mr. Chase's cartoon, and it includes a column by Mr. Fitzpatrick, the editor on the States, and that entire page is edited by Mr. Corbin and Mr. Kintzley.

Mr. Kramer: Would you spell that last name?

A. K-i-n-t-z-l-e-y.

By Mr. Phelps:

Q. With regard to coverage of political campaigns where a reporter has to go outside the city, is it customary for the morning and evening editions to send separate men? Or only one man? Or is there any general rule?

[fol. 1090] A. Well, if there is more than one candidate—and, of course, there is always more than one candidate, maybe up to five. We will, maybe, have as many as five people out at the same time. Three of them might be Times-Picayune at one period and two States, or it might be reversed.

The way we handle that: A reporter is assigned to each candidate and they have five and six meetings a day. He will take a meeting in the morning and he will write a story for the States. Then, later in the day, he will attend a meeting, another meeting, and write a story for the Times-Picayune.

[fol. 1091] Q. You mean the same reporter will do that?

A. The same reporter will do that, whether he be a Times-Picayune reporter or a States reporter. That is true, also, in some other fields: that happens in sports, sports assignments, also.

Q. Do you think of any other?

A. Sports and political, and frequently there will be special assignments. There might be some celebration, or some big event in some out-of-town area that we would send one man to who would provide a story for both papers. Either paper might send him. It might be the States or the Times-Picayune. All during the football season, Mr. Martinez, the Sports Editor for the States, covers the football games on Saturdays for both. Frequently on other events, the States would send a man and they would write for the Sunday or the daily papers, if it is early in the week. The same is true of the Times-Picayune.

Mr. Phelps: We have no further questions, if the Court please.

Redirect examination.

By Mr. Kramer:

Q. Do you know Mr. Nelson Swayze?

A. Yes, sir.

Q. He is an honorable man, is't he? So far as you know.

A. So far as I know.

Q. Before this lawsuit was filed, Mr. Swayze wrote a letter which is in evidence here. I am going to show you a copy of it. It is Government Exhibit 43. (Document [fol. 1092] handed to witness.) Down here, (and this is a letter to Mr. Frank Ricca, Edison Bros. Stores. Do you happen to know him?

A. No, sir, I do not.

Q. He says, in the last paragraph on the first page:

"Another thing that should be of interest to Edison Bros. is not only what our total circulation is but where it goes. The States has a vast majority of its circulation among the great middle classes who are the best potential customers for Edison Bros. stores. The States has tried consistently for the last 16 years" (this letter was written on March 9, 1950) "to slant its news and feature content towards the middle income bracket group. Our features, our coverage of news, our editorial policy, our Sports coverage, our Society coverage and other departments of our paper are deliberately aimed to reach and please this all important buying group."

Then he goes on and says:

"As you probably know the States has for many years published the pictures of brides . . ." and so on.

Do you want to read that for yourself?

A. (Reading.)

Mr. Wilson: May the Court please, may I inquire on what theory this is proper redirect examination? What question was asked by Mr. Phelps that would give rise to any testimony such as this?

Mr. Kramer: I presume that the purpose of the testimony [fol. 1093] that you elicited upon cross examination of this witness was designed to suggest to the Court that the States and the Times-Picayune were not separate papers but separate editions.

Mr. Wilson: He only examined him as to facts with respect to what the situation was on the fourth floor. Now, what does this have to do with the situation on the fourth floor up there? What inferences you would draw from it is another thing.

Mr. Kramer: Perhaps you ought to wait until I ask another question, and maybe you won't object.

Mr. Phelps: If Mr. Wilson doesn't, I shall object as far as questions of editorial policy is concerned. No questions were asked by me of this witness as to editorial policy.

Mr. Kramer: Quite right. And I shall ask none.

By Mr. Kramer:

Q. Did you read here, about the brides, and so on?

A. Yes.

Q. My question is, is what Mr. Swayze says true and if it is, is that the reason you have a separate society editor for the States from the Times-Picayune?

Mr. Phelps: If the Court please, I renew the objection. I think it is well founded. The matter of editorial policy regarding which I asked no questions at all,——

The Court: As I understand the question goes to the reason why they have separate editors.

Mr. Kramer: Separate society editors.

[fol. 1094] The Court: Society editors.

Mr. Wilson: Well, frame it better.

Mr. Kramer: Well, excuse me just a moment. One's judgment sometimes gets warped in the heat of lawsuits. (Confers with associates.)

Excuse me, Your Honor. I must persist in the question, so that Your Honor will have to rule on the objection.

Mr. Wilson: May I have the question read again by the Reporter?

Mr. Kramer. May I restate it?

Mr. Wilson: Yes. I would prefer you did.

Mr. Kramer: I will break it down into two questions.

By Mr. Kramer:

Q. Are the reasons given by Mr. Swayze in Government Exhibit 43, which I just read to you, the reasons why you have a separate States society editor from the Times-Picayune editor?

A. Mr. Wilson: Well, I object to the question because it is premised on reasons of Mr. Swayze. If he wants to ask him what the reasons are that he has separate editors, or if he wants to ask him if such and such is the reason.

The Court: What did Mr. Swayze have to say about the society editors?

Mr. Kramer: I didn't read it out loud, Your Honor.

The Court: See what he has to say about the society editors?

[fol. 1095] Mr. Kramer: "As you probably know the States has for many years published the pictures of brides and in many cases brides and grooms who were good wholesome citizens but not necessarily of the 400. In each case where such a picture has been published, the States has made life long friends and in most cases, life long subscribers. Our Society columns are written in a little breezier fashion and maybe we are not quite so exclusive in our coverage of Society events. All this is done in our effort to please this all important buying group, the great middle class."

I stopped reading there, Your Honor, because I thought it would be somewhat——

The Court: You want to know . . .?

Mr. Kramer: If that is the reason they have a separate Society Editor for the States from the Times-Picayune.

The Court: For what reason.

Mr. Wilson: I can't make out—if he wants to know if our States Society Editors are a little breezier than the Times-Picayune's Society Editors, that is all right.

The Court: It seems to me, whether they are breezier or not, it is a right for him to decide.

By Mr. Kramer:

Q. Do you know why the States has a different Society Editor from the Times-Picayune?

A. We have it for the same reason we have a different news staff. You have the same period of time that has to be [fol. 1096] covered. Our Society Editors have to report earlier for the Times-Picayune in order to cover the events of the day. There is no difference in that from the Sports or any of the other departments.

Mr. Kramer: I'm sorry, Your Honor. Now we are going to have to take a little time.

By Mr. Kramer:

Q. I ask you to read Government Exhibit 43, to yourself, carefully.

A. (Reading exhibit.)

Q. Have you finished reading it?

A. I have.

Q. Do you agree with the statements in that letter regarding the society column of the States, or don't you, sir?

Mr. Phelps: If the Court please, I think that is exactly what I had in mind when I said that my examination had nothing to do with the editorial policy.

The Court: I sustain the objection.

Mr. Kramer: If the Court please, may I appeal the ruling? If he had not answered the question I asked him just before that I would bow, and I would accept Your Honor's judgment. But now we have on the record the statement by the witness contrary to another statement by a States officer. Am I to be stuck with that? You see, the preceding question he answered differently than this letter.

Mr. Phelps: If the Court please, I don't agree with that at all.

[fols. 1097-1101] Mr. Wilson: He didn't write the letter.

Mr. Phelps: Would you point out the conflict?

Mr. Kramer: Yes. He says the States has different Society Editors than the Times-Picayune because they are printed at different times of the day, and the news breaks at different times of day, whereas I suggest that the Government Exhibit 43 has another view of why they have separate Society Editors.

The Court: And, furthermore, quite likely for both reasons. Is there anything inconsistent with that? Are the two reasons entirely repugnant?

Mr. Kramer: I don't think they are repugnant at all. When I asked for the two reasons, and he gives one——

I withdraw the appeal, Your Honor.

That is all the redirect.

Mr. Phelps: We have no further examination.

(Witness excused.)

Mr. Kramer: Would Your Honor like to hear from the witness Sheets now?

The Court: If you are ready to put him on. Any time you are ready.

[fol. 1102] Harrison F. Houghton, a witness recalled by and on behalf of the Government, having previously been sworn, was further examined and testified as follows:

Direct examination.

By Mr. Flurry:

Q. Mr. Houghton, for the record, are you the same gentleman who has testified previously in this case?

[fol. 1103] A. Yes, sir.

Q. Were you requested, Mr. Houghton, to make a study of the net profit or loss of the operations of the New Orleans States?

A. Yes, sir.

Q. What period of time was covered by that study?

A. 1947 through 1950.

Q. What was the sources of your material which was used in making the study?

A. The accounts and the records of The Times-Picayune Publishing Company: the figures from the Audit Bureau of Circulation and the figures from Media Records.

Q. I will show you Government's Exhibits 73, 74, 72, 78, and 79, which have been previously identified by Mr. Frank, of the F. B. I., and ask you if that is the material to which you refer?

A. (Examining documents.) That is part of the material. [fol. 1104] Mr. Flurry: May it please the Court, Mr. Frank also testified with respect to Government Exhibits 75, 76 and 77, and on the objection of counsel for the defendants, Your Honor reserved the ruling as to the admissibility of those three Government Exhibits which were offered. We now again offer Government Exhibits 75, 76 and 77.

Government Exhibit 75 is "New Orleans States Monthly Summary and Reporting Schedule of Regular Employees, Regular and Overtime Worked by Departments, During the Year 1949", and carrying the FBI Exhibit Number of Exhibit 2-A.

"G-76" is "Times-Picayune Monthly Summary and Reporting Schedule of the Number of Employees, Regular and Overtime Hours Worked by Departments, During the Year 1949", marked FBI Exhibit 2-B.

"G-77" is "Times-Picayune-New Orleans-States Monthly Summary of Reading Matter, Advertising, Newsprint, Circulation," etc. "for the Years 1948, 1949 and 1950", and marked FBI Exhibit 3-A.

Mr. Wilson: If the Court please, as to Exhibit 75 and Exhibit 76, I would like to object to those because the title of the exhibits is entirely misleading. The evidence of the witness Frank has shown that all he did was take the hours according to the way the payrolls were labeled. Now, these would indicate that this is some kind of a breakdown as to how the various personnel within the Times-Picayune are assigned, and how they work and where they spent their time. It was known to the Government prior to the time that these were made that that was not true, if they took

those payrolls, and Mr. Frank has said that all he did [fol. 1105] was take those payrolls.

In other words, it shows where it was chargeable on the audits which are, admittedly, and the testimony shows were, arbitrary audits, arbitrary sets of books within the company.

For what they show, that is, that we kept our books in that manner, I would have no objection, but to put them in as monthly summaries and supporting schedules of the number of employees, regular and overtime hours worked by departments during the year 1949, and then purport from that to divide the number of hours and the number of employees between the States and the Times-Picayune editions and leave the impression that that represents the true facts, I object to that because from here on, if the witness starts to build the assumption on these, he is bound to come up with a picture that has no relation to the true facts.

For that reason, I object to Exhibits 75 and 76.

On Exhibit 77, entitled "Monthly Summaries of Reading Matter, Advertising, Newsprint, Circulation", I have no objection at this time.

The Court: Well, I think it has been clearly shown here that the payrolls do not purport to accurately reflect the hours worked by the various employees by each newspaper. Is that correct?

Mr. Wilson: Yes, sir.

The Court: I don't see how anyone could go wrong on that at this stage. These reports are simply based on the records as they are kept by the Times-Picayune Publishing [fol. 1106] Company. I will overrule the objection. They will be admitted.

(The documents marked "G-75", "G-76" and "G-77" for identification, were admitted in evidence.)

By Mr. Flurry:

Q. Now, I show you, Mr. Houghton, Government Exhibits 75, 76 and 77, and ask you whether or not you have used material contained in those exhibits as the basis for your studies—please strike the question. Was Government Exhibits 75 and 76 and 77 used in connection with your study?

A. Yes, sir.

Q. Now, in connection with your study, Mr. Houghton, of the net profit or loss in the operations of the New Orleans States, did you formulate certain tabulations and charts?

A. Yes, sir.

Q. I hand you Government Exhibit 127. Have you examined Government Exhibit 127?

A. Yes, sir.

Q. What is Government Exhibit 127?

A. Government Exhibit 127 is a table showing the allocation of revenues by the Times-Picayune Publishing Company, 1947 through 1950.

Q. What source did you use for Exhibit 127?

A. Government Document 72, Government Document 73 and Government Document 74.

Q. What period of years does Government Exhibit 127 cover?

[fol. 1107] A. 1947 through 1950.

Q. Will you explain the method used in the compilation of that tabulation?

A. The data on advertising revenues by type and circulation—revenues by type shown in the first three columns of each portion of the table, were compiled directly from the end of the year, twelve months' statements, in the respective Government Documents just cited. The percentages were computed under my supervision, percentages shown in the fourth column, representing the States as a per cent of total for each of the various categories.

Q. Now, what was the purpose in connection with your study of the profits and losses of "G-127"?

A. To give me a basis for examining and appraising the methods by which the Times-Picayune Publishing Company had allocated its revenue as between the Times-Picayune morning and Sunday as a unit and the States as a unit.

Q. And all of the figures on Government Exhibit 127, with the exception of the percentage figures, were taken directly from the statements of the publishing company?

A. Yes, sir.

Mr. Flurry: We offer in evidence Government Exhibit 127.

The Court: It will be admitted.

(The document marked "G-127" for identification, was received in evidence.)

[fol. 1108] Mr. Flurry: We have, Your Honor, an extra carbon copy of the tabulations and charts which I believe will save time of the Court if I let Mr. Houghton use them.

(Mr. Flurry handed said documents to witness.)

By Mr. Flurry:

Q. I ask you, Mr. Houghton, to turn to Government Exhibit 128.

The Court: We will take a recess for ten minutes.

(Short recess.)

[fol. 1109] Q. Mr. Houghton, I ask you to refer to document marked Government Exhibit 128 and state what it is.

(The document referred to was marked "G-128" for identification.)

A. Government Exhibit 128 is a data sheet showing the computation of ratios for the States in terms of annual pages, annual circulation and circulation per day times pages, annual, 1947 through 1950.

Q. Will you explain to the Court what you mean by "circulation per day times pages," and how you arrive at that.

A. The net-page-circulation-per-day figure is multiplied by the number of days which the particular paper is published through the year, in order to—I beg pardon.

The circulation per day times pages is the net page circulation per day times the number of pages that that paper is published throughout the year.

On this table, it represents a multiplication of Column 1 times Column 3. I think there is an error in typing in that designation under Column 7.

Q. What is that error?

A. I think it should be one times three.

Q. Now, what was the source of data used in the making of Government Exhibit 128, generally.

A. The sources were Media Records and the Audit Bureau of Circulation.

[fol. 1110] Q. What does the first column on the left refer to, Mr. Houghton?

A. That refers to the total number of annual pages carried by Ayer.

Q. I mean, the very first column on the left.

A. The side headings refer to the various newspapers published by The Times-Picayune Publishing Company, namely, the Times-Picayune, morning, the Times-Picayune and States, Sunday, and the third heading is for the total for the Times-Picayune, morning and Sunday.

The next heading is for the States, evening, except Saturday; the next, for the States, Saturday; the next, for the total of the States; and the last, total for the Times-Picayune Publishing Company.

Q. Now, I notice that there is a difference in the statements for 1949, 1948 and 1947 to 1950.

Will you explain what that difference is due to.

A. The Audit Bureau of Circulation reported separate circulation figures for the five-day operation of the States and the six-day, Saturday, in the year 1950; whereas, in 1949, '48 and '47, they combined all of the six-day operations into one figure.

Q. Now, will you take each of the columns, one through eight, and explain the method used by you in the compilation.

A. Column 1 refers to the annual pages produced for each of the newspapers. The figures for each of the newspapers [fol. 1111] were transcribed from the Media Records and This Week Rotogravure and Comic lineage pages were excluded from the totals.

Q. Now, the column headed "per cent": Was that simply your calculation of the percentage of the States to the whole?

A. That column shows both the percent of the total for the morning and Sunday and the total for the States as percentages of the total for The Times-Picayune Publishing Company.

Q. I will ask you to proceed with the other columns.

A. The third column represents the net-page circulation per day, as reported by the Audit Bureau of Circulation. This figure was originally picked up from the N. W. Ayres Directory, but I confirmed it from the Audit Bureau of Circulation and checked the figures to make sure they are exactly the same.

Q. Has the reference to the Ayres Directory been erased from the original exhibit number?

A. Yes, sir.

Q. You may proceed.

A. Column 4 represents the number of days each of the newspapers were produced throughout the year. Column 5 represents the circulation per year. That is the net-page circulation per day multiplied by the number of days the paper was published.

Column 6 represents the percentage distribution of Column 5; namely, the circulation per year, showing the per cent for the Times-Picayune, morning and Sunday, and the per cent for the States.

The seventh column represents the circulation per day [fol. 1112] times pages, which represents Column 1 multiplied by Column 3.

The eighth column represents the percentage distribution of Column 7 as between the Times-Picayune, morning and Sunday, and the States.

Q. Now, please refer to Column 3 and note a footnote reference.

Will you explain that footnote.

A. In order to arrive at an average of the circulation for the States for the six-day operation for circulation, I divided the five-day figure by five and added it to the six-day and then divided by six, in order to determine an average.

Q. Now, in Columns 1, 7 and 8, under the year 1947, you have the letters "NA".

To what does that refer?

A. Those letters mean that the data for those particular years were not available to me at the time I made this study.

Q. Now, will you explain what purpose the G-128 served in your study of the profit and losses of the States.

A. This is a basic work sheet to determine certain ratios as between the States and the Times-Picayune, morning and Sunday, as a basis for my allocation of expenses.

Mr. Flurry: We offer in evidence Government Exhibit 128.

Mr. Wilson: If the Court please, I think my basic objection is fairly well known and I would like to reserve my objec- [fol. 1113] tions on all of these exhibits until after cross examination, so that we may have all the facts before the Court.

The Court: All right.

By Mr. Flurry:

Q. Now, will you please turn to Government Exhibit 129 and state what it is.

(The document referred to was marked "G-129" for identification.)

A. Government Exhibit 129 is a tabulation of data on columns of reading matter, lines of advertising, general, retail and classified, and inches of zinc used in engraving, 1948 through 1950 for the States and for the Times-Picayune, morning and Sunday.

Q. What was the source of the data used in Government Exhibit 129?

A. This table was compiled from Government Exhibit 77. [fol. 1114] Q. I note at the bottom of Government Exhibit 129 a footnote compiled from Exhibit 3-A. To what does Exhibit 3-A refer?

A. Exhibit 3-A was the Exhibit Number placed on this document by the FBI.

Q. Now, will you explain the method used by you in this tabulation?

A. The annual totals were tabulated for six factors, namely, columns of reading matter, lines of retail advertising, lines of general advertising, lines of classified advertising, total lines of advertising, and square inches of zinc used in engravings for both the States evening and the

Times-Picayune morning and Sunday. The percentage columns shown represent, first, the per cent of the total for each of these factors used by the States, and the other percentage representing the per cent of the total used by the Times-Picayune morning and Sunday.

Q. Will you explain at this point, Mr. Houghton, why you included square inches *inches* of zinc used in engravings?

A. That is a factor which I used in the photo engraving room reallocation of expenses.

Q. Now, what was the purpose of this tabulation, "G-129"?

A. Each of the factors was considered in the reallocation of expenses for the various departments to which they may apply.

Mr. Flurry: We offer in evidence Government Exhibit 129.

The Court: Do you prefer that the Court reserve its ruling on the offering?

[fol. 1115] Mr. Wilson: I request that Your Honor's ruling be reserved until I have an opportunity to cross-examine Mr. Houghton. I prefer not to break in on each one as he testifies.

The Court: Very well.

By Mr. Flurry:

Q. Now, Mr. Houghton, turn to Government Exhibit 130 and state what it is.

A. Government Exhibit 130 is a man-hour schedule for 1949, showing the man-hours for the day's departments of the Times-Picayune Publishing Company as between the Times-Picayune morning and Sunday and the States evening.

Q. Now, what were the sources of the data used in G-130?

A. The sources were Government Exhibit 75 and Government Exhibit 76.

Q. Why did you use only the year 1949, Mr. Houghton?

A. The year 1949 was the only period covered by the FBI in their tabulations from the books of the Times-Picayune Publishing Company.

Q. With respect to man-hours?

A. In respect to man-hours.

Q. Will you explain the method which you used in making tabulation "G-130"?

A. The figures were transcribed from the Government Documents which I just mentioned, and totals carried for the Times-Picayune morning and Sunday and for the States evening. A grand total is struck between the two and a [fol. 1116] ratio of the States to the total of Times-Picayune and States is computed.

Q. I note, Mr. Houghton, in some of the exhibits which have not been explained yet, that you have referred to mechanical man-hours. Could you tell us from Exhibit 130 to which department that would refer?

A. The mechanical departments are the composing room, the press room, the stereotype room, the photo engraving room and the mail room. I might add that maintenance is also considered by me as a mechanical room although there was no breakdown of man-hours as between the papers.

Q. Now, at the bottom of the left hand side of the tabulation are the words "distributed man-hours". What is the difference between distributed man-hours and mechanical man-hours?

A. The distributed man-hours represents the total of each of the departments for which there was distribution of man-hours as between the Times-Picayune morning and Sunday, on the one hand, and the States on the other. Those departments, for which there was a distribution, were summed up and an average struck—that is, pardon me, a percentage struck as between the two.

The Court: What became of the 330 odd thousand man-hours that were lost?

A. Where is that, Sir?

The Court: In the final figures you have got the States exactly the same, for total man-hours and distributed man-hours, you have got a difference between distributed man-hours and total man-hours.

[fol. 1117] A. Well, we have two different ratios. You see, we computed the man-hours as a percentage of the total, irrespective of whether they were distributed or not. That

is the upper figure which comes out to 24.1. Then another ratio is computed, based on only the departments where there was a distribution as between the two papers.

The Court: Well, these figures reflect the distribution made by The Times-Picayune Publishing Company on its books of the payrolls—are these figures based on the payroll records of the Times-Picayune?

A. Yes, sir.

Mr. Wilson: All of them?

A. All but the percentages and the totals which I struck and the averages which I struck.

The Court: I am hoping that somebody can explain this so that I can understand it. I don't know what happened to 400 thousand man-hours. No matter how you distribute them, the total should be the same, it seems to me.

Mr. Flurry: I think, Your Honor, that I may clarify it in my own mind as to the point Your Honor has. Is Your Honor referring to the totals under the columns, total Times-Picayune-States to the distributed man-hours and the total man-hours?

The Court: That is right.

By Mr. Flurry:

Q. Will you explain that?

A. I am not clear as to what the problem is.

[fol. 1118] Q. As I understand it, His Honor refers to the total appearing under the column Total Times-Picayune and States opposite total man-hours, 1,826,871, and Distributed Man-hours, 1,489,560? Can you explain the variation in those two figures?

A. The maintenance department was not distributed. The general advertising department was not distributed. The office expense was not distributed. The general expense was not distributed, and the fixed charges was not distributed. Therefore, the distributed man-hour total is that figure less those particular departments. The purpose was to exclude all departments where there was not an allocation to the States and compute a percentage whereby we

could determine a basis for distributing undistributed man-hours.

The Court: Do you think that affords a basis for the distribution of the undistributed man-hours?

A. Well, it is an averaging device.

Q. I ask you at this point, Mr. Houghton, whether or not the yardstick of man-hours has been the only yardstick used in your study.

A. No, sir.

Q. That is only one of several approaches to the distribution?

A. That is correct.

Q. Now, in the left hand column, the first left column on the page, please refer to the statement Total of One and Three, and explain what that means and what the purpose was.

A. The Times-Picayune Publishing Company did not distribute its man-hours as between the Times-Picayune morn- [fol. 1119] ing and Sunday and the States evening for the general advertising department. Therefore, in order to arrive at some standard by which those man-hours could be distributed, I averaged the man-hours in the display department and the classified department, so that the one and three are combined, and then a ratio is computed.

The Court: Is there necessarily any relationship between the man-hours in those departments and the man-hours in the general advertising department?

A. Well, I think you will see as we proceed that there are other, confirming statistics which tend to improve on the bare essentials that we show here.

The Court: All right.

By Mr. Kramer:

Q. Now, at the bottom of the page, you have a reference compiled from Exhibit 2-A and 2-B. Do those numbers refer to exhibit numbers of the FBI which appear in certain of the Government Exhibits?

A. Yes, sir.

Q. What Government Exhibits are those?

A. Government Exhibits 75 and 76.

Q. Now, what was your purpose in connection with your study in making "G-130"?

A. The man-hours are one of the bases which I used to reallocate the expenses of the various departments of The Times-Picayune Publishing Company as between the States and the Times-Picayune morning and Sunday.

[fol. 1120] Mr. Flurry: We offer in evidence Government Exhibit 130 under the reservation.

Q. I now turn to Government Exhibit 131, Mr. Houghton. Will you please state what Government Exhibit 131 is.

A. Government Exhibit 131 is a chart entitled Major Ratios indicating division of activities between Times-Picayune morning and Sunday and States evening, 1949.

Q. Now, is the chart appearing on the easel the same as Government Exhibit 131?

A. I think I have the wrong print in my hand, because one correction was made on one of the bars, 17.7. I hope the Court has the proper chart. Does it have 17.7 over circulation department?

The Court: Yes.

A. This one has been corrected.

Q. What is the purpose of this chart, Mr. Houghton, in connection with your studies?

A. The purpose of this chart is to illustrate the various ratios, the principal general ratios that I have used in reallocating the expenses as between the Times-Picayune morning and Sunday and the States evening.

Q. What was the source of the data used in making Government Exhibit 131?

A. The sources were the books of The Times-Picayune Publishing Company and Media Records and Audit Bureau of Circulation.

Q. Now I notice an asterisk under the first bar and the [fol. 1121] fifth bar, Mr. Houghton. To what does that refer?

Mr. Wilson: Mr. Flurry, would you excuse me just a moment? In regard to the witness' last answer, I understood him to say that he also took it from the books of The Times-Picayune Publishing Company, and I would just like to

have the record clear as to whether he took it from the books of the Company, or whether he took it from figures drawn off by the FBI and handed to him.

A. I think all three are correct. The photostatic copies were taken from the books of the company, and the man-hour figures were the records drawn off by the FBI.

Mr. Wilson: As well as some of the circulation figures?

A. The circulation figures were from Media Records—I mean from Audit Bureau Circulation.

Mr. Wilson: Those can all be checked and may be seen in Media?

A. Yes, sir.

By Mr. Flurry:

Q. Did you explain the asterisks?

A. That refers to the percentage of the total operating expenses in the year 1949 which were allocated to the States by the Times-Picayune Publishing Company.

Q. Now, Mr. Houghton, will you explain the method used in the making of this chart beginning at the left hand side and proceeding by bars to the right?

[fol. 1122] A. On the left hand side, the percentages are indicated, ranging from ten, twenty, thirty and up to forty. The captions below on the horizontal axis represent the various factors which are portrayed on the charts, namely, total operating expenses, net paid circulation, annual published pages, circulation times pages, newsprint consumed, editorial space, total advertising space, total distributed man-hours, distributed mechanical man-hours. Each of the bars is drawn to the appropriate percentage point indicating the percentage that the States had of the total in that particular factor.

Q. Does bar 1 represent the percentage calculated from the records of the Times-Picayune Publishing Company as contained in the photostat?

A. Yes, sir.

Q. Now, what does bar 2 from the left represent?

A. It represents the net paid circulation as computed from the figures from the Audit Bureau of Circulation.

Q. Is that 29.9 per cent for the States based upon that paid circulation?

A. That is correct. That is on an annual basis.

Q. I beg your pardon.

A. That is on an annual basis.

Q. Now, Annual Published Pages, was that taken from one of the previous schedules which you have——

A. Yes, sir.

Q. What schedule would that be?

[fol. 1123] A. Government Exhibit 128.

Q. And Circulation Times Pages, is that referred to in a previous Government Exhibit?

A. That is also from Government Exhibit 128.

Q. And Newsprint Consumed, that is from the books of The Times-Picayune Publishing Company?

A. Yes.

Q. And editorial space?

A. That is from Government Exhibit 129 and refers to columns of Reading Matter.

Q. That has reference to the reading matter contained in the paper as distinguished from advertising matter instead of strictly editorial page?

A. Yes, sir, that is correct.

Q. The Total Advertising Space, what does that refer to?

A. That refers to the proportion of all of the advertising space published by The Times-Picayune Publishing Company carried by the States, and is secured from Government Exhibit 129.

Q. Now, does Total Distributed Man-hours in this chart on next to the last bar refer to the total distributed man-hours carried in the previous Government Exhibit to which we referred a moment ago?

A. Yes, sir, Government Exhibit 130.

Q. And the Distributed Mechanical Man-hours in the last bar, does that refer also to those man-hours as shown in the previous exhibit?

A. Yes, sir, from Government Exhibit 130.

Q. And that also shows a variation in percentage between distributed mechanical man-hours and total distributed man-hours?

[fol. 1124] A. That is correct.

Q. Now which of these percentage bars have you used, Mr. Houghton, with respect to the calculation of the profits and the losses of the States?

A. Each of the ratios were used, excluding two, namely, the total operating expense and the newsprint consumed, which were the proportions shown by the records of The Times-Picayune Publishing Company.

Q. Did you apply the ratio shown on the bar Newsprint Consumed, with respect to any of the departments?

A. That was the actual ratio computed from their records, and since it was so close to the Circulation Times Pages ratio, the newsprint consumed figure was accepted without change.

Q. Did you consider the Circulation Times Pages as a counter-check against Newsprint Consumed, as charged on the books of the Times-Picayune Publishing Company?

A. That is correct.

Q. Now, in what departments did you use the bar entitled Distributed Mechanical Hours?

A. Well, that was used, for example, in the maintenance department where there was no distribution made by the company. That is, there was a very small distribution made by the company.

Q. Were there any other departments in connection with which you used the ratio shown on the chart as distributed mechanical man-hours?

[fol. 1125] A. That was the only department I used it for.

The Court: Let me ask at this point, is this method that you employed here—are these generally accepted methods that you know have been employed elsewhere, or is this just something that you devised?

A. Well, Sir, I think that this is novel in some respect, although I have consulted with, for example, accountants with the Bureau of Internal Revenue who have used these ratios in tax cases, and other Certified Public Accountants have helped me too.

The Court: Do you know what tax cases it has been used in?

A. No, sir, I don't know.

The Court: You mean income tax cases against newspapers?

A. In cases of claims on excess profits taxes by excess profits tax council of the Bureau of Internal Revenue.

The Court: Let us go back to 130 for just a moment, if you don't mind. The last column at the top, 27.2 per cent. Is that supposed to be an average of the five figures immediately preceding it?

A. No, sir, it is an average derived from the total shown in the columns. See, that is 201,000 over 74,065.

The Court: That wouldn't be the average of the five?

A. No, sir. You see, if you would average the five, you would have the unit weighted average. By totalling, you compensate for the weighting of the various figures.

[fol. 1126] The Court: I see, proceed.

By Mr. Flurry:

Q. With whom did you talk about these distributions with respect to newspaper accounts in the Department of Internal Revenue?

A. Mr. Gordon A. Anderson, Certified Public Accountant.

Q. Did he inform you that he was handling or had handled income tax or excess profits tax cases with respect to the operations of newspapers?

A. Yes, sir.

Mr. Wilson: Well, I object to any hearsay testimony from this witness. I would like for Mr. Anderson to be produced if you want to get into that. I am objecting to him asking what conversations he had with Mr. Anderson.

By Mr. Flurry:

Q. Did you consult with any other account with respect to this problem?

A. Yes, sir, I consulted with Mr. Lundvall, the Chief Accountant of the Federal Trade Commission. I also consulted with Mr. Coen who is a newspaper accountant.

Q. Will you spell the name, please?
A. C-o-o-k-e C-o-e-n.
Q. And where is Mr. Coen from?
A. Chicago.
Q. Is Mr. Coen in the Court Room?
A. Yes, sir.

[fol. 1127] Q. Were these tabulations yours or were they tabulations by any of these other gentlemen whom you have mentioned?

A. After I had worked on some of the basic concepts and gone over the books for some week or two, Mr. Coen was employed by the Government on a consulting basis. He came to Washington and we went over the whole problem and developed certain standards which we would follow, and I proceeded with the analysis therefrom and completed the work.

Q. Now, have you used the bars which are labeled Circulation Times Pages other than for a counter-balance or check against Newsprint Consumed?

A. That ratio was used in one of the reallocations of the press room expenses.

Q. You will come to that in one of the future exhibits?
A. Yes, sir.

The Court: Which bar is that?

Mr. Flurry: That is the fourth bar from the left, Your Honor.

By Mr. Flurry:

Q. Do the ratios on Paper Consumed and Circulation Times Pages have any direct relationship to expenses in any other department that you recall, Mr. Houghton?

A. Aside from the Newsprint Consumed, there is also some relationship between the Circulation Times Pages ratio, and the amount of ink consumed. There is also a relationship to the press room activities.

[fol. 1128] Q. Have you used that column in any of those instances?

A. I used it as I mentioned before in one of my reallocations of the press room expenses. I used it as a check against the allocations of ink expense made by The Times-

Picayune Publishing Company and concluded that their allocation was proper and accepted their allocation.

[fol. 1129] Q. In making your study, Mr. Houghton, of the profits and losses and distributions in the various departments by The Times-Picayune Publishing Company, what was the purpose for the formation and comparison of these various bars?

A. This was to give me a graphic idea of what the various possibilities were, what the various ratios would bear in relationship to the various departmental functions and how they would affect the distribution of expenses.

That is sort of a summary chart showing the relationship between the various economic factors that are involved in such a distribution of the costs.

Q. Well, will you please state what the results, as shown by the chart with respect to the relationship of the various percentages to the ratio or percentage shown in the box on total operating percentage?

A. Well, it will be noted that each of the bars runs to a higher percentage than the actual operating expenses which were allocated to the States by The Times-Picayune Publishing Company, with one exception; that is, two exceptions, but only one ratio involved, namely, circulation times pages, which is practically the equivalent of the newsprint consumed.

Q. And you did use circulation times pages as the basis for the newsprint?

A. Yes. In checking the newsprint, it was so close that I accepted the newsprint consumed, without question.

Q. Now, have you used the ratio shown in each of the bars [fol. 1130] as to every department in The Times-Picayune Publishing Company's organization of its records?

A. No, sir. The net-page circulation ratio was used throughout most of the departments. The published pages was also used throughout most of the departments. The circulation times pages was only used for one of the departments, namely, the press room and as a check against the newsprint consumed. The editorial space was used, particularly for the Editorial Department and some of the other

white-collar departments as a check against some of my other computations.

The advertising space ratio was used as a basis for part of the reallocation of expenses in the Advertising Department.

The total distributed man hours was used at certain points where no distribution had been made on the company's books. The mechanical man hours was used only to fill in the Maintenance Department, where no allocations had been made by the company.

Mr. Flurry: We offer in evidence Government Exhibit 131.

The Court: It will be admitted.

(The document referred to, marked "G-131" for identification, was received in evidence.)

By Mr. Flurry:

Q. Now, will you please turn to Government Exhibit 132, which we have marked in series of A, B, C and D.

(The documents referred to were marked "G-132-A, -B, -C, and -D" for identification.)

[fol. 1131] Q. (Continuing.) Does each of these numbers, G-132-A, -B, -C and -D, consist of three pages?

A. Yes, sir.

Q. Now, please look at Government Exhibit 132-A, -B, -C and -D and state what each is.

A. Each of the exhibits in Government 132-A, -B, -C and -D represent detailed tabulations of the operating expenses of the States, as allocated by The Times-Picayune Publishing Company, and as reallocated according to man hours, published pages and circulation for the years 1950, 1949, 1948 and 1947.

Mr. Flurry: May the record show that 1950 is G-132-A; 1949 is G-132-B; 1948 is G-132-C; and 1947 is G-132-D.

By Mr. Flurry:

Q. What were the sources of data used in making 132-A, -B, -C and -D?

A. The data shown in the first three columns of each of these tables were secured from the books of The Times-Picayune Publishing Company.

The ratios shown in the fourth column were computed under my supervision from the first three columns.

Columns 5 through 9 represent ratios which were used as a basis for reallocating the expenses to the States and have been previously identified in the Government's documents that have been presented.

Columns 10 through 14 represent the actual reallocations which were made by me on the basis of ratios shown in the [fol. 1132] columns, 5 through 9, which ratios were applied against the totals for the Times-Picayune and States, shown in Column 3 of the tabulation.

Q. Now, in the first column to the left of each of the pages, please turn to 132-B and we will take that for the explanation.

Will you state whether or not, in the lefthand column on each of the three successive pages, is shown the various departments carried in the records of The Times-Picayune Publishing Company, as furnished to the FBI, and the various expense categories in each of those departments.

A. They were all taken from the books prepared, photostated by the FBI from the books of The Times-Picayune Publishing Company.

Q. Now, in Columns 5, 6 and 7, you have man hours, published pages and circulation.

Are those the three principal ratios upon which your reallocations have been based?

A. Yes, sir.

Q. Did you make a complete study, according to each of those ratios, as applied to the expenses of the States?

A. That is correct. In certain departments where, in my judgment, the particular ratio did not apply, another ratio may have been substituted; but, in general—For example, in the published pages, it represented the published pages ratio.

The Court: Isn't it a matter of opinion. You say, "in your judgment"? You mean, in your opinion, largely.

A. Whatever you say.

[fol. 1133] The Court: You are the witness. I am asking you.

A. In my judgment or my opinion. I thought it was my judgment.

The Court: Let me ask you this, getting back to this chart: Isn't it quite likely that another expert will come along and say: "This company is in the business of publishing a newspaper or newspapers and the gauge should be circulation times pages. The proper allocation should be 17.7 percent"?

A. That was the first thing that occurred to me as I made this study.

The Court: If they held that, then, more expenses have been allocated to the States than should have been, and it should have shown a greater profit, assuming all other things are equal.

A. If that were true, yes.

The Court: But you don't think that is the basis? You think all the other factors enter into it?

A. They have a very definite bearing, if you want me to proceed on that.

I can state very briefly that the circulation-times-pages ratio has particular reference to newsprint and ink and pressroom activities, and the other ratios are much more applicable to the division of activities in the other departments.

The Court: All the people who work for the paper are producing papers which are circulated, aren't they? I mean: The ultimate objective is to put out a newspaper?

[fol. 1134] A. That is correct.

The Court: But you think that the circulation times published pages, the circulation times pages, is the factor, only with respect to newsprint consumed? And what else?

A. Press room activities and the ink, because that represents the aggregate of newsprint that runs over the rolls. It doesn't reflect the activities of setting up pages. You set up one page and then a lot of newsprint is run over it, you see.

The Court: All right. Let's get on.

Mr. Wilson: If the Court please, I do not want my failure to object to preclude me from attacking this witness' qualifications. I have heard of no qualifications on the part of this witness that would entitle him to express any opinion about how to run a newspaper or how to account a newspaper or, in fact, how to do a cost accounting job.

The Court: Well, he is an economist.

Mr. Wilson: That is my understanding, yes.

Mr. Flurry: Excuse me a moment.

The Court: This will be a good time to stop for the noon recess.

(Whereupon, at 12:30 o'clock, p. m., a recess was taken until 2:00 o'clock, p. m., of the same day.)

[fol. 1135] AFTERNOON SESSION

HARRISON F. HOUGHTON, resumed the stand and testified further as follows:

Direct examination (Continued.)

Mr. Flurry: May it please the Court, I don't think I have given the witness an opportunity to make exactly clear what he was referring to on man hours.

I would like to refer back to Government Exhibit 130 for a moment before proceeding with 132.

By Mr. Flurry:

Q. Mr. Houghton, will you please refer back to Government Exhibit 130 on man hours' schedule for 1949.

Will you explain to the Court what man hours are included in the first total at the bottom of the column headed, "Total, Times-Picayune and States".

A. Under distributed man hours?

Q. Total man hours. The first total appearing at the bottom of the tabulation.

A. Total man hours represents the total man hours employed by the entire newspaper operation.

Q. Does that include man hours which were not distrib-

uted in the records of the company, as well as man hours which were distributed in the records of the company?

A. It is the aggregate; whether they were distributed or not, in all the departments where they kept man hour records.

[fol. 1136] Q. Now, will you explain the total appearing just under that total, 1,489,560, as to just what it contains?

A. It is a total of the combined operations, the number of man hours in combined operations for the company in those departments where an allocation has been made as between the Times-Picayune, morning and Sunday, and the States.

For example, there is no figure for the States under "maintenance". There is no figure for the States under "general advertising". There is no figure for the states under "office expense, general expense or fixed charges".

Q. Now, when you said, "have not been allocated," you mean they did not show as having been allocated on the records which were furnished to you by the FBI from the company.

A. That is correct.

Q. Does that explanation account for the difference between the two totals appearing at the bottom of the columns, "Total, Times-Picayune and States"?

A. Yes, sir. For example, in arriving at the total for the third column, entitled, "Total, Times-Picayune and States," the following departments were excluded: maintenance, general advertising, office expense, general expense and fixed charges.

There were no figures in any department for fixed charges, for either paper, that is.

Q. Now, please turn back to Government Exhibit 132-A -B, -C and -D and particularly to 132-B, which is the 1949 tabulation.

[fol. 1137] Now, what does the lefthand column, the first column on the page on the left, refer to?

A. The lefthand side headings or column refers to the various departments within the newspaper, including composing room, press room, stereotype room, photo-engraving department, mail room, maintenance, etc.

There are also, within those composing rooms, subdivi-

sions for particular entries which were kept by The Times-Picayune Publishing Company.

Q. Now, have you included on each of the departments or rooms all of the expense categories which were shown in the records of the publishing company?

A. Yes, sir. All of the expenses are included, as in accordance with the records which were photostated by the FBI.

Q. Now, will you please explain what the columns, the three columns to the right of the first column are and from what they were taken.

A. The first column refers to the expenses charged to the Times-Picayune, morning and Sunday, according to the books of the company.

The second column refers to the expenses that were charged to the States, according to the company.

The third represents the total of the expenses for the company.

Q. Now, what is the fourth column, headed "Ratio of [fol. 1138] States to Times-Picayune and States, percent"?

A. The fourth column represents a ratio for each of the expense items, not only for the major departments, but for each of the subdivisions of the department, expressing the States as a percentage of the whole. In other words, the States, is a percentage of the total expense for The Times-Picayune Publishing Company.

The Court: You say the first column is the Times-Picayune?

A. Morning and Sunday.

The Court: Morning and Sunday. I thought you just said, the Times-Picayune.

By Mr. Flurry:

Q. Now, with respect to Columns 5, 6 and 7: Do those columns constitute the principal standard by which you have measured the allocations of expenses to the States?

A. Yes, sir.

Q. Have you used, in certain places which we will come to, other standards for comparison purposes to those three standards?

A. Yes, sir.

Q. Are the columns headed, "Eight and Nine, Editorial News Space and Advertising Space," the other standards which you have, in some instances, made comparisons with?

A. They are part of some of the other standards. Those two ratios, editorials or news space and advertising space, were applied to different departments where, in my opinion, the States has not been charged with an appropriate per-
[fol. 1139] centage of the total expenses.

Within certain of the departments under the headings of the ratios of man hours, published pages and circulation, I have varied from the straight circulation ratio or the straight published pages ratio, where some other type of ratio would be more applicable.

For example, in the Advertising Department, rather than use an aggregate figure for all published pages, I made specific breakdowns in terms of the actual percentage of the total lineage for the combined operation which was carried by the States.

Similarly, in the case of circulation, there are some departments where, in my opinion, the circulation ratio was not applicable and I would substitute another one of my basic ratios for that particular department.

The Court: Let's take Column 5.

Is this 132-B we are reading from?

Mr. Flurry: Yes.

A. That 33.8 percent for composing room. In that case, that is the man hour ratio which you will find for the composing room on Exhibit G-160. You will note on Government Exhibit—I mean, 130. I beg pardon. On 130, man hours schedule.

The Court: I have it.

A. Opposite the side heading, "composing room," in the last column, you will find the figure 33.8; therefore, the 33.8 is the man-hour percentage which was used to reallocate the composing room expenses.

[fol. 1140] The Court: In other words, you have applied the ratio which the paper, itself, applied?

A. The ratio that was found from the records from, the paper on man hours.

The Court: Proceed.

By Mr. Flurry:

Q. Now, what do the figures appearing under Columns 10, 11 and 12 represent?

A. The figures under Columns 10, 11 and 12 represent the reallocations which I made after applying the ratios shown in the Columns 5 through 7; in other words, Column 3.

The Court: Let's go back to Column 6.

A. Yes, sir.

The Court: Where does that 31.6 come from? Published pages?

A. Published pages.

If you will refer back to Government Exhibit 128, under Column 2 in the year 1949, opposite States, you will find the percent figure, 31.6. That is the ratio which has been used for the published pages reallocation for the composing room.

The Court: Annual published pages?

A. Yes, sir.

The Court: That is as appears from the records of the company?

A. From Media Records.

[fol. 1141] The Court: Based on the records from the actual circulation?

A. Yes.

The Court: Do I understand that where the paper's records disclosed a high ratio applied to the States that you let that stand? You didn't disturb the high ones?

A. No, sir. I used, consistently throughout, a set of standards, no matter what the results were.

The only time that I varied from those standards is when, in my opinion, the ratio had no direct bearing with the operations of that department. For example, in the press room, in my opinion, the circulation ratio is not applicable, because the operations of the press room are more closely geared to the flow of newsprint over the presses; so, I took the circulation-times-pages ratio and substituted it for the

circulation. You will note that that is a much lower ratio than the circulation ratio. It is 17.8, as compared with 19.9.

The Court: All right.

[fol. 1142] Q. Now, Mr. Houghton, will you take each of the rooms or departments and explain to the Court what ratio you have used under Man-hours and Published Pages and Circulation. Just a moment, please, withdraw that for the moment. First explain to us where the circulation figures which you have used came from.

A. The circulation figures which I used came from the Audit Bureau of Circulation. I should like to point out that I used the figures for the six months' period ending September 30 of each year. The reason I used that rather than calendar years was that the calendar year figures for 1950 were not available at the time I made the study. The six months' figures, however, were. I made a check of the percentages, and there was only a variation of one-tenth of one per cent. Therefore, I felt that there would be no serious error in following consistently throughout the period the six months' figures.

Q. Did that give you a consistent comparison of 1950 with the previous year?

A. That is correct, and incidentally I would like to point out that that is the figure which is published in the year books and used covering all of the newspapers throughout the country.

For example, Editor and Publisher carries that figure, Ayres Directory carries that figure, Ayer & Sons Directory. There may be some variations as between papers but, as I understand it, the September 30 figure is the accepted standard for the year.

Q. Now you said there was about one-tenth of one per cent variation, did you mean variations between the annual figures and the six months' report figures?

[fol. 1143] A. To be more specific, the ratio for the year 1950—or the year 1949, I should say—using the six months' average, the one that I used was 29.9. Had I used the calendar year figures, it would be 30.0, and I was really erring conservatively.

Q. Now, would you take each department, Mr. Houghton, and explain to the Court just what percentages you have

used under Man-hours, Published Pages and Circulation, with respect to that department.

The Court: What are you talking about now?

Mr. Flurry: Each of the departments, Your Honor.

The Court: This is on 132-B?

Mr. Flurry: Yes, Your Honor.

A. For the composing room, I used the man-hour ratio which was secured from Government Exhibit 130, namely, 33.8. For the Published Pages ratio, I used 31.6, which was secured from Government Exhibit 128. For the Circulation Ratio, I used 29.9, which was secured from Government Exhibit 128. The ratios, it may be noted, compare against the ratios found from the books of the company of their actual allocations.

For example, within the composing room department the States was charged by the Company with 32.8 per cent of the payroll, with 20.0 per cent of the type machine supplies, 16.5 per cent of other supplies, and 16.8 per cent of other expenses. The average for the whole composing room as allocated by the company was 32.5 per cent. This compared [fol. 1144] with the three ratios which I used, namely, man-hours, which was 33.8, published pages, which was 31.6, and circulation, which was 21.9.

In other words, two of my ratios were lower than those used by the company, and, therefore, the expenses which I would have charged those departments would have been less than the company charged the States themselves.

In the case of the press room, the man-hour ratio as shown in Government Exhibit 130 was 46.9. The published pages ratio is the same as that used for the composing room, coming from Government Exhibit 128, and was 31.6. The circulation ratio was not used for this department, but instead I used the circulation times pages ratio, which would come from Government Exhibit 128. This is substantially lower than the published pages ratio and also lower than the circulation ratio, so we, therefore, have three different tests in that department.

Now, the various individual expenses within the press room were allocated by the company in the following fashion: 18.1 per cent of the payroll was charged to the States,

18.2 per cent of the supplies was charged to the States, 20.0 per cent of the rollers was charged to the States. No part of the other expense, which was relatively small, was charged to the States.

In the aggregate, for the press room, 18.0 per cent was charged to the States. Thus, one of my ratios is somewhat lower than the percentage that the company charged, one of them is substantially higher, and the third is approximately on a par with the ratio that they used.

[fol. 1145] I might point out that the reason for using the 31.6 there is that in the press room there can be a variation in the amount of man hours used on a particular part of the operation, depending on how many papers they run through the press room at a given time. If they set it up so that they are producing two or four or eight papers simultaneously, they need more crews to man the presses. Therefore, if they had a double crew running it through at the same time, it might require a ratio in proportion to published pages, or, at least, a compromise between the circulation times pages, which is newsprint, the newsprint ratio being applicable. There would be a compromise if we tested both ratios——

The Court: You don't know whether they used one crew, two crews or three crews, do you?

A. No, sir, I did not have the information on that.

The Court: What is the basis for these figures?

A. They are checks, Sir, to see how accurate they were themselves in allocating their expenses.

The Court: How accurate they were or how they compared with your theory?

A. Not how they compared with my theory, with my opinion rather.

The Court: I see. Proceed.

A. (Continued) In the stereotype room, the Man Hour ratio, taken from Government Exhibit "G-130" is 30.9. The published pages ratio was the same as that for the other two departments mentioned, namely, 31.6. The cir-[fol. 1146] culation ratio was the standard circulation ratio of 29.9. It may be noted that each of these ratios is slightly higher than the 28.1 per cent of the expenses which the company allocated to the States.

The Court: 28.1 in what?

A. The stereotype room.

The Court: That wouldn't show on "G-131", would it?

A. No, sir. I did not break down the accounts by individual accounts on that chart except in the case of the newsprint concerned. The photo engraving department, the 19.1 per cent was also—for Man Hours was also secured from the Man Hour Schedule on Government 130. The 30.0 represented the proportion of total inches of zinc used in engraving for the States, according to the company's records.

By Mr. Flurry:

Q. Will you explain there why you substituted the percentage of inches of zinc used rather than your published pages percentage?

A. Well, the amount of zinc has a relationship to the number of cuts that are made in the photo engraving department, so that that was a little closer test ratio than published pages. The 29.9 figure for circulation was the same figure used throughout.

In the mail room, the Man Hour figure of 20.0 was secured from Government Exhibit 130; the published pages ratio was the same as that used in other departments, the circulation ratio was the standard circulation ratio. In this case, two of my ratios were higher than those of the com-
[fol. 1147] pany and one was only slightly above that of the company.

In the maintenance department, among the various detailed expense accounts carried by the corporation, only one had a portion of it allocated to the States, namely, supplies. In that case, $3,110 out of a total of $150,747 for the company as a whole was charged to the States. This represented a percentage of 2.1 as shown in column four. For the Man Hours I used, as you may note from Government Exhibit 130, the mechanical department ratio. In other words, the ratio derived from the total of each of the mechanical departments namely, composing room, press room, stereotype room, photo engraving room, and mail room. The published pages ratio was the same as those above. The circulation ratio was the same as those shown for other departments under circulation.

Q. May I ask, at this point, why you used the 27.2 per cent under Man Hours rather than the total distributed Man Hours?

A. Maintenance bears a closer relationship to the various mechanical departments than to the whole operation, all of the operations of the newspaper. That is, the editorial and so on do not bear a very close relationship to the maintenance functions.

Q. Would it be correct to say that the operations of the maintenance was more nearly mechanical as it is in the department listed above maintenance just as it is in each of those departments?

A. I am sorry, I didn't get the question.

Q. I asked if it would be proper to say that maintenance, by its nature, is more nearly akin to the mechanical work [fol. 1148] involved in the composing room, press room, stereotype room, photo engraving department and mail room, than it would be related to a distribution of Man Hours including administrative departments.

A. Yes, sir.

The Court: What is the basis for that statement?

A. Well, the maintenance department—the functions of the maintenance department are more closely geared to the operations of the composing room and press room. Most of the maintenance work is in these various mechanical departments.

The Court: Doesn't that depend on the kind of maintenance work it is? I see here you have elevator tenders, porters. Do you know where these porters work, whether they clean up the press room, or the editorial room?

A. I should think they would have to devote much more time cleaning up the press room than they would the editorial room.

The Court: I should think they would devote very little time to cleaning up the press room. They could clean the editorial rooms every day, wouldn't they, or do you know?

A. I don't know.

The Court: I want to see how much of this is guesswork. What are these supplies, do you know what they are?

A. No, sir, I don't have a breakdown of their accounts. This is the way they carry them.

The Court: It says "Maintenance". I don't see how you can draw a conclusion as to what kind of maintenance it is. [fol. 1149] A. I think you can draw a conclusion by looking at some of the individual categories, for example, electrical repairs, which I assume would be more clearly related to some of these mechanical departments than it would, say, to the editorial department.

The Court: All right. Go ahead.

By Mr. Flurry:

Q. I ask you, Mr. Houghton, whether or not it is true that, according to Government Exhibit 130, that you have used the smaller ratio figure with respect to the Man Hours in the maintenance department?

A. Yes, sir. The 27.2 which was used to allocate the maintenance expenses is smaller than that for the total distributed Man Hours. In other words, by using the 27.2 allocated less to the States than I would have if I had used the Man Hours for all of the operations.

Q. Now, will you take the advertising department?

A. In the case of the advertising department, under each of the columns entitled Man Hours and Published Pages, I put down specific ratios applying to the sub-classification. For example, under the published pages ratio, the lines of retail advertising is used for the payroll display account, the figure being 18.1, as shown in Government Exhibit 129 opposite lines of retail advertising for the year 1949.

Running down the list, the classified payroll was 41.9, which was the percentage of the total classified advertising used by the States. The classified telephone solicitors was also 41.9, representing the proportion to the total lines of classified advertising used by the States. The total lines of advertising ratio as used in the case of supplies and gen- [fol. 1150] eral commissions, transportation or travel and other expenses which are related, in my opinion, to the total operation of the advertising department.

The general expense, having reference to general advertising, followed the ratio of 32.5, which is the percentage of total general advertising carried by the States as shown in Government Exhibit 129.

In the case of Man Hour figures, the 25.6 shown at the

top is shown in Government Exhibit 130 on the Man Hour Schedule and refers to the percentage of the total Man Hours allocated by the Company, or according to the Company's books taken by the FBI, to the States.

[fol. 1151] The Court: Where are you reading now?

A. The top figure on the column "25.6."

By Mr. Flurry:

Q. Under Man hours?

A. Under Man hours, across from Payroll Display.

The Court: Where did you say you got that?

A. That is from Government Exhibit 130: the Man Hours Schedule. The figure opposite Display Advertising is 25.6.

The next figure is 17.3, which you will note is the figure on Government Exhibit 130, opposite Classified, representing the percentage of the total manhours allocated by the Company to the States in the Classified Department. Also, Classified Telephone Solicitors has the 17.3 figure. The Payroll, General, is 22.1, which represents an average as between the Classified and Display. In that case on the Man Hours Schedule, Government 130, you will note that the Company did not allocate any manhours for General Advertising to the States, and in order to get an approximate figure which might be applied to the General Advertising I took an average between Display and Classified.

The Court: You say you took an average?

A. Yes, sir. I added the figures for the Display to the Classified and then took a percentage ratio of the total.

The Court: Did you include the 20,376 lines?

A. No, sir.

The Court: "Hours," I mean.

A. No, sir. You will note, as the caption indicates, it's a [fol. 1152] total of one and three. I omitted the middle figure. That would throw the ratio out of line.

In other words, in every sub-classification within the Advertising Department, I attempted to apply the figure, the ratio which the Company's own records on the amount of lines in advertising indicated would be applicable to the States. In the case of the Man Hours I used the figures where they were applicable, according to our Man Hours

Schedule and if we had no figure for the particular department I used an average of what we did have.

The Court: Well now, the 20,376 hours that you omitted from that calculation, in reaching the 22.1, constituted part of the number of hours which you deducted from 1,826,871 Total Man Hours, to arrive at the figure 1,489,560, being the Distributed Man Hours, did you not?

A. Yes. The same type of procedure, to see what.

The Court: Of course, that had the effect of increasing the ratio from 24.1 to 29.6, didn't it?

A. Yes, sir. It wouldn't be fair to try to reallocate on the basis of what they already had allocated if they hadn't allocated it, see, within the particular departments.

Now, you maybe noted I have a footnote "7" underneath the Circulation caption, for the Advertising Department and also under the Editorial or News Space and Advertising Space. That is because I have used the Published Pages ratio, which in turn is a combination of Advertising Lines, in order to arrive at a more appropriate figure than the Circulation figure given itself. In other words, in my opinion there is no correct relationship between the [fol. 1153] costs of selling advertising and the advertising. That is, there is a more direct relationship between costs and the actual lines that are run.

The Court: I don't understand that.

A. Well, circulation is one stage removed from the operations of an Advertising Department. Circulation is what is looked to by an advertiser. When you sell advertising you sell lines. Therefore, in order to determine how much of the costs of selling should be charged to the States as compared to the Times-Picayune morning and Sunday, I took the ratio of the lines of advertising. Actually, it is a lower ratio than the circulation ratio in this case.

The Court: Suppose an advertising salesman was selling advertising only in one newspaper or the other, or one edition or the other.

A. Well, if that were the case——

The Court: All of that expense should be charged to the paper for which he was working, wouldn't it?

A. That is correct. If that is the case. Presumably, if

these man hour figures are accurate they are allocated already according to what newspaper they worked for. If they are inaccurate, the purpose of the Published Pages or Lineage figures is to check against it. The whole purpose, in my opinion, in having a series of checks, is so that if one ratio is wrong we can test it with another as we go along the line, and maybe by the process of trial and error, or ultimate averages, we will come out right. That is my endeavor.

The Court: I see.

[fol. 1154] A. In the Editorial Department, the Man Hour figures were secured also, from Government Exhibit 130. I should point out that in the case of the Advertising Department there were certain expenses which were strictly applicable only to the Sunday operation. For example, the Roto Magazine: there are two entries, as you may note, from the detail in the left column, under "Roto." Those were all charged to the Times-Picayune, and none of it charged to the States.

In the same fashion, in the Editorial Department there is a Payroll Roto. That is allocated by me, all to the Times-Picayune before I compute my ratios, so you will note there are no ratios entered in those Roto or Sunday Payroll items.

By Mr. Flurry:

Q. Was it also true that the Times-Picayune Publishing Company had not charged any of that to the States?

A. That is correct. They charged it all to the Times-Picayune, morning and Sunday.

The 35.2 figures on Man Hours is the same as found in Government Exhibit 130 for the Editorial Department, and that has been applied to each of the various sub-classifications of the Editorial Department, exclusive of the Roto and other functions which were clearly and obviously chargeable only to the Times-Picayune morning and Sunday.

For the Published Pages ratio the figure is 36.6. That is to be found on Government Exhibit 129, which is labeled, "Columns of Reading Matter" and that is the figure which was taken from the books of the Company by the F. B. I. You will note that that same percentage is applied to each of

[fol. 1155] the sub-expense items, with the exception of those clearly applicable only to the Sunday operation.

In the case of the Circulation reallocation, the regular circulation ratio was applied.

In the case of Office Expense——

The Court: Let me ask you this: Why did you accept the 36.6 that the company applied?

A. I assumed that they kept accurate records on the reading matter, as between the papers. And the F. B. I. went over the records carefully, and I assume that they got correct records.

The Court: All right.

A. In the case of Office Expense, out of a total of 296,519 the company charged nothing to the States. My Man Hour reallocation, referring to Government Exhibit 130, was that for the total distributed man hours. The Published Pages ratio was the standard Published Pages ratio that I have used in many of the other departments.

The Circulation ratio of 29.9 was a standard circulation ratio that I used.

The Editorial was again the columns of Reading Matter: 36.6. The Advertising Space, the 26.2, which is the proportionate total lines of advertising carried by the States, according to the records of the Company.

By Mr. Flurry:

Q. May I ask you in that connection, did you actually use the figures 36.6 and 26.2 appearing under the Editorial [fol. 1156] News Space column, and the Advertising Space Column, or were those put there merely as a check?

A. They were used as a check against the other ratios. In approximately five departments there was practically nothing, or very little at any rate, charged to the States by the Company, and in order to have as many checks as possible, I used not only the three basic checks of Man Hours, Published Pages, and Circulation, but also two additional ones: namely, News Space and Advertising Space.

Q. When you say "used" Mr. Houghton, do you mean that you used them as a counter-balance or did you use them in the computation of the actual amount of the States' expenses in your showing of profit or loss?

A. Well, in a sense they are used both ways, but principally as an additional check against the allocations under the three basic standards which I used; namely, Man Hours, Published Pages, and Circulation.

Q. You may proceed.

A. Did I cover General Expense?

Q. No; I believe you were down to General.

The Court: No. You covered Office Expense.

A. In the General Expense Department, the States was charged with $2,458.00 out of a total of $365,254.00 by the Company. This represented seven-tenths of one per cent of the total expenses of the General Expense Department. My ratio was 29.6 for Man Hours, which again represented the Distributed Man Hours ratio; 31.6 which represented [fol. 1157] the Published Pages ratio, and 29.9 which represented the Circulation ratio. In addition, I used the News Space ratio, namely 36.6, and the Advertising Space ratio; namely, 26.2, as further checks against my three basic ratios.

In the case of the Circulation Department the figure of 32.9 was used for the Man Hours which represents the Man Hours ratio found in Government Exhibit 130. The Published Pages ratio was not used. Instead I substituted the Circulation ratio for the Circulation Department, and that ratio is 29.9. And that ratio was again used under the Circulation reallocation. The reason I used the circulation ratio instead of Published Pages is that the Circulation operation is clearly related to the business of distributing the newspapers and the number of pages does not matter very much. Of course, the ratios are not far different, but in order to be more conservative I used the 29.9 which is lower than the Published Pages ratio, which would be 31.6.

Incidentally, there was very little difference between what the company allocated to the States and what I would under these ratios, particularly the Circulation ratio. Their figure was 30.1 and mine would be 29.9.

In the Fixed Charges Department——

Q. Just a moment, please. There were two items in the Circulation Department which were not divided as to the States and the Times-Picayune at all, were there not?

A. Yes. The Canvassers County Payroll was all charged

to the Times-Picayune by the Company. Transportation [fol. 1158] and Travel which was $29,581.00 was all charged to the Times-Picayune by the Company.

In the Fixed Charges Department the Company charged 11.6 per cent of the total expenses for Fixed Charges to the States. The Man Hour figure which I used was again the total Distributed Man Hours ratio, namely, 29.6; and the Published Pages estimate used the regular Published Pages ratio of 31.6; Circulation, 29.9.

The Editorial News Space ratio was the same as I had used previously and the Advertising Space ratio was the same that I had used previously.

In the case of the remaining three departments, namely, Newsprint Paper, Ink, and Roto Magazine Production, the allocations which were made by the Company appeared to me to be accurate and reasonable, having checked the Newsprint and Ink against the Circulation Times Pages ratio so I carried those forward without any change, and added them to the reallocations which I made.

In the case of the Roto Magazine, all of that was charged by the Times-Picayune Publishing Company to the morning and Sunday operation, and that was appropriate in my opinion, so I accepted their allocation.

Q. Now, will you explain the Grand Total percentages: what they mean.

A. They are computed after the reallocations have been made. For example, in each case I have carried forward into Columns 10, 11 and 12, the entire reallocation that I have made and then I have totaled them in those columns. And so if we apply the reallocations I have made against [fol. 1159] the total expenses of the Company as the Grand Total of Expenses as found in Column 3, we can derive the ratios which I used. For example, what we might call the aggregate ratio which I came to under Man Hours is 23.4. In other words, 23.4 per cent of all the expenses of The Times-Picayune and States Publishing Company were reallocated by me to the States on the basis of Man Hours. 21.1 per cent were reallocated on the basis of Published Pages, and 23.1 per cent on the basis of Circulation.

Q. And what was the Company's percentage of the whole on the allocation to the States?

A. 20.1.

Q. Mr. Houghton, can you state to the Court whether or not, in your opinion, there is any substantial difference between the allocations arrived at by you in your work and those made by the Company, except in certain departments where little or no allocation had been made by the Company?

Mr. Wilson: Just a moment. I object to asking for his opinion on it. It seems to me that is strictly a question of fact.

Mr. Flurry: I will ask him to state from the exhibit whether or not that is true.

Mr. Wilson: The exhibit speaks for itself. I object to it.

The Court: I will permit the question.

A. There are very minor differences as between what the Company charged, or allocated, to the States in the various [fol. 1160] departments and my reallocations in the various departments, except for five: namely, Maintenance, where they charged the States with only 2.1 per cent: a total of $3,000.00 out of the Company's total expenses for all of its operations of $150,000.00. My reallocations ranged from $41,000.00 on the basis of the Man Hours figures to $47,600.00 on the basis of the Published Pages, $45,000.00 on the basis of Circulation, and $55,000.00 on the basis of Editorial Space, and $39,500.00 on the basis of Advertising Space.

In the case of the Office Expense nothing was charged to the States by the Company. On any one of my five standards the range would be from a low of $77,700.00 to a high of $108,500.00.

In the case of General Expense they charged $2,458.00, or seven-tenths of one per cent of the total to the States, whereas my reallocations would range from a low of $95,697.00 up to $133,683.00, on any one of five standards.

In the case of Fixed Charges, they charged——

Mr. Wilson: Just a moment. Did I understand you to say five standards, or three standards?

A. Five, in that case. I used five different standards in the case of the General Expense Department.

In the same fashion, in the case of fixed charges, the Company had allocated 11.6 per cent to the States and a total amount of $28,000.00 out of a total of $242,000.00, roughly. In comparison my reallocations ranged from a low of $63,000.00 to a high of $88,000.00 the mean being somewhere in the middle seventy thousands for that de-
[fol. 1161] partment.

The Court: You mentioned you applied five different standards with respect to General Expenses. You didn't carry that down beyond that point, did you?

A. No, sir.

The Court: You only used three ultimately?

A. Three for the purposes of my over-all reallocation. At another point you will see the purpose of having the other two.

The Court: You said that the Company allocated 20.1. Is that correct?

A. In the aggregate.

The Court: To the States, in the aggregate.

A. Yes, sir.

The Court: And under your three tests, what did you apply?

A. They came out to——

The Court: Came out to what?

A. 23.4, 24.1, and 23.1.

The Court: Under no test did it amount to a difference of four per cent?

A. That is correct.

By Mr. Flurry:

Q. Now, Mr. Houghton, will you please refer to "G-132-A" and I ask you if that is similar to "G-132-B" which you have explained? That is for the year 1950, I believe: 132-A.

[fol. 1162] A. This tabulation is very similiar to the one for the year 1949, as I have just discussed. There are some differences that should be noted.

Q. Will you point out those differences?

A. For example, in the case of Man Hours, having only one year available to me, I applied the same ratios throughout as were used for the year 1949. In fact, I used those

ratios for each department exactly in the same way for each of the four years which I covered.

[fol. 1163] Q. Did you use on published pages and circulation the ratios based upon the published pages and circulation for the year 1950?

A. I used the 1950 figures for those ratios. In fact, for every sub-ratio within this whole computation, I used 1950 figures, except for manhours. That includes advertising, and all along the line. They are all included in these same Government exhibits that we have referred back to.

Q. Are there any other differences between 132-A and 132-B?

The Court: Let me get this straight.

Do I understand that you used the 1949 manhours schedule?

A. Yes, sir.

The Court: You did?

A. Yes, sir.

The Court: I see.

A. All of the others are 1950 ratios, except 1949. There are no other differences that I recall.

By Mr. Flurry:

Q. I ask you to refer to 132-C and state whether or not it has been made in a similar manner to that of 132-B; that is, the 132-C is the 1948 year.

A. The 1948 is also the same as 1949, except that I have used the 1948 ratios, except in the case of manhours, where I used the 1949 ratios.

Q. Please refer to Government Exhibit 132-D and state whether or not it is the same as 132-B; and, if there are any [fol. 1164] differences, please point out the differences.

A. There again, I used the 1949 manhour ratios. In certain places, I did not have available to me the 1947 ratios; for example, in published pages; however, I noted at the head of the column, head of Column 6, that I had applied 1948 ratios.

There are also asterisk notations where I used 1948 ratios instead of 1947.

In my opinion, there are only slight variations resulting

from the use of the 1948 figures in those particular instances.

Q. In your opinion, did that have any significant effect upon the final results for the year 1947?

A. No, sir. In my opinion, it didn't. There is a very close confirmation as between the various standards which I have used, and that leads me to believe that the slight variations in the ratios which occur from year to year would not significantly affect my results.

Q. Now, please turn to Government Exhibit 133, which is also divided into three sub numbers; I mean four sub numbers, A, B, C and D.

Will you state what those exhibits are?

A. These are summary tables drawn from the preceding detailed tables, except that they also include on them revenues and the estimated profit or loss which I have made on the basis of my reallocations.

Q. Are these exhibits the same, except with respect to the year to which they apply? I mean: Are they similar in manner of making?

A. Yes. Government Exhibits 133-A through -C are the same in format, the differences being only that they apply to different years.

[fol. 1165] The Court: "D".

A. Yes, -A through -D. Pardon me.

By Mr. Flurry:

Q. What were the sources of the data used in G-133-A, -B, -C and -D?

A. Column 1 are the figures taken directly from the records of The Times-Picayune Publishing Company, showing the revenues and expenses allocated to the States by the company and the profit or loss which they showed on their books.

Q. Do these exhibits relate in any way or have any relationship to 133-B and 132 and 127? And, if so, what is that relationship?

A. Would you show me the document you are referring to? I don't remember the numbers.

Q. Do you have 133-B, which is 1949, and 132?

A. B?

Q. Yes, and 127?

A. Yes.

Q. Now, will you explain the relationship of 133-B in 1949 year to 132-B?

A. Exhibit 133-B carried forward the expenses, expense totals, department by department, from the detailed tabulation, Government Exhibit 132-B.

They are posted, first, in Column 1, as from Column 3 of Government Exhibit 132-B, as taken directly from the books of The Times-Picayune Publishing Company.

[fol. 1166] The Column 2, which is Man Hours, is taken from the same Government exhibit, representing allocation, based on the Man Hour ratios.

Column 3, Published Pages, comes from the same detailed exhibit.

Q. What column, please?

A. Oh, in the detailed exhibit, Column 6. I beg pardon. Column 11, which are the actual dollar reallocations.

Column 4 on G-133-B comes from Column 12 in the G-132-B schedule.

Similarly, the figures under Editorial News Space and Advertising Space come from the detailed table by department totals.

Q. The Editorial Space and Advertising Space are Columns 5 and 6 on 133-B, are they not?

A. Yes, sir.

Q. Now, will you explain to the Court the method you used in making G-133-A, -B, -C and -D, using G-133-B with which to illustrate?

The Court: 133 what?

Mr. Flurry: "B". That is the 1949.

We are just following the same year through, Your Honor, because it might be a little clearer to follow.

A. Column 1 was secured from the books of the company and the revenue portion is carried forward from Government Exhibit 127, which was the detailed revenue statement, as taken from the books.

The Court. In other words, you accepted their distribution of the revenues?

[fol. 1167] A. Yes, after I had analyzed them.

Mr. Flurry: We will come back to that in just a moment, Your Honor.

By Mr. Flurry:

Q. Now, will you proceed in explaining each of the columns?

A. Column 2 represents the Man Hour totals as taken from the detailed exhibit.

Published Pages and Circulation were also taken from the detailed exhibit, as was Editorial Space and Advertising Space, these all being my reallocations in terms of dollar totals.

All of these figures are the dollars of expenses under my reallocation system which, in my opinion, were chargeable to the States.

Columns 7 through 11 are merely arithmetic differences between the amounts that the company charged to the States and the amounts that I charged to the States on each of the different standards, department by department.

The Court: Now, enlighten me a moment. It might save a little time here.

I understood you to say that in 1949, there were three standards which you applied. The difference between the States' allocation or the newspaper's allocation to the States did not vary more than 5 per cent than the difference between the standards that you applied and the allocation they made.

A. That is right.

The Court: Now, I see that you have converted what they [fol. 1468] show as a profit of $218,626 to the loss under each of the standards that you applied, the loss ranging from the Published-Pages standard of $178,726 to a loss under Circulation standard of $80,648.

How could you do that with 5 per cent off? Five per cent of $2 million total expense is only $223,000. Five per cent of that is a little over $100,000, isn't it?

A. The 5 per cent would be applied against the total expenses of the corporation, not against the total for the States, see. This is only the figure they had charged to the States. You see, apply the 5 per cent to the figure——

The Court: The total expenses of the corporation? Where is that?

A. For 1949, they were $10,567,076.

By Mr. Flurry:

Q. Now, under Columns 5 and 6, Mr. Houghton: Were the figures appearing under Columns 5 and 6 actually taken into the results which you have reached under Columns 2, 3 and 4? Or were they simply used as checks against 2, 3 and 4?

A. They were simply used as checks against 2, 3 and 4.

Q. They were not actually taken into the total expenses at the bottom of Columns 2, 3 and 4?

A. No, sir.

[fol. 1169] Q. And was that also true with reference to columns 10 and 11 as compared to columns 7, 8 and 9?

A. Yes, sir.

Q. Now, going back to revenues, Mr. Houghton, did you consider the advertising revenues allocated to the States by the publishing company?

A. Yes, sir.

Q. Did you find any category of revenues with respect to which you were in disagreement?

A. Yes, sir. I felt that their classified revenues were low. They hadn't given the States sufficient classified revenues under the standards which they had followed. They used an 80-20 distribution, and I presume that the difference between the 80-20 and the 22.6 per cent figure which they resulted in was this over the river classification which all went directly to the States, inappropriately, in my opinion. If they were going to use the circulation rate, they should have applied something closer than the actual circulation rate, namely, around 30 per cent, so that they under-allocated the States, didn't give the States enough revenue, in my opinion, there.

On the other hand, in the circulation revenues, according to Mr. Adams' deposition and his testimony in Court yesterday, they carried some of the Sunday revenues in the States under carrier revenues, and actually that amounts to a substantial over statement for the carrier revenues

which the States was entitled to, in my opinion. Those two factors——

[fol. 1170] The Court: Do you know what the amount was?

A. Well, there is one rough check that I can make. Mr. Adams' deposition stated that 350,000 of the Sunday issues——

Mr. Wilson: Just a minute, repeat that figure.

A. 350,000 of the Sunday papers were carried by the States' carriers.

Mr. Wilson: That is fine. That is just a little in excess of our total Sunday circulation.

A. I beg your pardon. I meant 35,000, at approximately eleven cents a copy, and if you work that out for the twelve months, it works a fairly sizeable figure which they put into the States, which they might well have taken out. Those two factors—I don't have a pencil and have the figures right here, but I worked them out, and they come out actually what should have been deducted from carriers, in my opinion, was somewhat larger than what should have been added to classified.

So, rather than go through and try to reallocate the whole business; I merely accepted their totals, because my principal concern, since the total seemed to balance out, was to examine the excesses and see whether they were properly allocated or not.

By Mr. Flurry:

Q. Are there any differences in Government Exhibit 133-A and Government Exhibit 133-B except that each carries the figures for the respective years?

A. There are no other differences. They are just sum-
[fol. 1171] mary tables drawn from the detail tables.

Q. Is that also true as to Government Exhibit 133-C?

A. Yes, sir.

Q. And Government Exhibit 133-D?

A. Yes, sir.

Q. I notice several footnotes on 133-B, Mr. Houghton. Will you explain those footnotes?

A. Footnote 1 indicates that in the advertising department, rather than use the circulation ratio, I have used the published pages straight across, except for the Man Hours.

Footnote 2 indicates for the circulation department that I have used, under the published pages reallocation, the circulation ratio rather than the published pages ratio.

Footnote 3 shows that I have carried forward the precise allocations for paper and ink that were made originally by the Times-Picayune Publishing Company.

The Court: Court will recess until twenty-five minutes to four.

(Short recess.)

The Court: Proceed.

By Mr. Flurry:

Q. Mr. Houghton, I ask you to refer back to Government Exhibit 133-A and state the results which you reached by your reallocation for the year 1950.

A. My reallocation, as shown in Government Exhibit [fol. 1172] 133-A, indicates that department by department, there have been certain variations between the charges made to the States by the Company and my own.

For example, in the composing room, referring to column 7 under my Man Hour reallocation, I would have increased the expenses $6,000.00. For published pages, I would have decreased the costs to the States by $14,000.00. In the case of the circulation reallocation, I would have cut the expenses $29,709.00. Similarly, there are variations, department by department; for the press room under the Man Hours, I would have cut the States' costs by $4,000.00. Under published pages, I would have increased them by $42,000.00. Under circulation, decreased them by $1,000.00. In the case of the stereotype room, the increases under my reallocation would range from $5,000.00 to $8,463.00, and so on down the line, department by department.

The total effect of my reallocations is that under the Man Hours reallocation, the expenses of the States should have been increased by $339,199.00; under the published pages, it should have been increased by $378,458.00.

Q. I believe you are reversing it.

A. Under the published pages reallocation, it should have been increased by $378,458.00, and under the circulation, it should have been increased $308,431.00. These figures should have been added to the $2,221,323.00 which were actually charged to the States by the company.

The Court: You don't mean that all those figures should [fol. 1173] have been added?

A. Each of them for the three separately.

The Court: According to which standard you apply?

A. That is correct. The results are shown in the last line on the table for 1950. Whereas the company shows that the States had a profit of $186,540.00, I find that it would have a loss under my Man Hours reallocation of $152,659.00.

Under the published pages reallocation, a loss of $191,918.00, and under the circulation reallocation, it would have a loss of $121,891.00.

By Mr. Flurry:

Q. Now, I believe you have already given us your results under "G-133-B", which was for the year 1949. Please turn to "G-133-C", which is for the year 1948, and state what your results were.

A. In the year 1948, whereas the company showed on its books a profit of $299,070.00 for the States, my reallocations indicate that on the Man Hours reallocation, the States would have lost $8,480.00, under the published pages reallocation, would have lost $139,399.00, and under the circulation, $2,248.00.

Q. Now, please refer to Government Exhibit 133-D and state what your results were.

A. For the year 1947, according to Government Exhibit 133-D, whereas the company showed the States with a profit of $450,171.00, I also show them a profit of $158,590.00 on the Man Hours reallocation, of $42,557.00, on the published [fol. 1174] pages reallocation, and $162,314.00 on the circulation reallocation.

Q. Now, please turn to Government Exhibit 134. I will ask you to state what 134 is.

A. Government Exhibit 134 is a chart showing the departmental expenses for which the Times-Picayune and the Government are in complete agreement.

Mr. Wilson: Just a minute. Right at this point, I want to put in an objection to this chart. Any chart with any heading on it as to a determination as to whether the Times-Picayune and the Government are in agreement, I object to. I am not in agreement with the Government with anything.

Mr. Flurry: We submit; Your Honor, that the chart is made according to the Government's theory of the case.

Mr. Wilson: Well, it is perfectly all right with me for you to make a chart, but I don't want a heading like that on it going into the record.

The Court: Counsel is saying that the Government agrees with the Times-Picayune's allocation, is that it? Is that what this means?

Mr. Flurry: Yes, Your Honor.

Mr. Wilson: But, if the Court please, that is misleading because the Government was told in advance that these allocations were arbitrary allocations. There are a number of these charts in which the conclusion is drawn as to whether we are in agreement, substantial agreement, or great disagreement. They have those headings on them, [fol. 1475] and I just don't want any charts in here that would imply on the facts that there is any agreement between the Government and the defendants, or any substantial agreement.

The Court: I think the caption is objectionable. I think it is misleading.

Mr. Flurry: May it please the Court, I would like to know if we could have the privilege of changing the heading of the chart?

The Court: I see no objection to that, but I am wondering what this adds to the case anyway.

Mr. Flurry: This particular chart, Your Honor, doesn't add anything particularly, because we have accepted the figures found in the records turned over to the FBI, and we are in complete agreement with those figures. We think it

does portray something with reference to other departments.

The Court: Well, I think the caption could be readily changed to meet the objection. I think it should be.

Mr. Flurry: I should like to inquire from the attorney for the defendants if there would be any objection to the changing of the title of the chart from Departmental Expenses for which the Times-Picayune Publishing Company and the Government are in Complete Agreement for 1949 to For which the Records of the Times-Picayune Publishing Company Furnished to the FBI are in Complete Agreement with the Government's allocation?

Mr. Wilson: I object to any conclusion on there. You don't need that kind of a heading on it. If you want to put [fol. 1176] on there that that shows that that depicts the figures—that is a chart depicting the figures which you have offered in evidence, that is all right, but I don't want any testimony on the heading of the exhibit.

The Court: I think it comes more closely to being a situation where the Government accepts the allocation which appears on the records of the Times-Picayune Publishing Company at the time these charts were made.

Mr. Flurry: May it please the Court, we would like to submit the charts with the heading stricken out and have the chart prepared without the present heading on them.

The Court: All right.

By Mr. Flurry:

Q. Will you explain what Government Exhibit 134 is.

A. That is a chart showing the amount of money which the Times-Picayune Publishing Company allocated to the States for newsprint paper and for ink in the year 1949.

Q. Is Government Exhibit 134 the same as the chart on the easel except that the latter is enlarged?

A. Yes, sir.

Q. What was the source of the data in the making of this chart?

A. The chart was plotted from the data included on Government Exhibit 133-B, under the caption Paper and Ink, shown in column 1 of that exhibit.

Q. Have you used the allocations shown in this chart for [fol. 1177] paper and ink in your tabulation, Government 133-A, B, C and D—I beg your pardon, I believe this is—does this chart represent 1949?

A. 1949 only.

Q. Have you used the ratio shown in this chart for paper and also for ink in your Exhibit 133-B?

A. Yes, sir. The actual dollar figures. These are dollar figures; they are not ratios.

Q. You have over here on the left-side Allocation Times-Picayune Publishing Company. To what does that refer?

A. That refers to the allocations that were made to the States by the Times-Picayune Publishing Company according to the records received by the FBI from the company as to the amount of expense for paper that the States was charged with.

Q. Does the bar here represent the actual amount of the charge for paper?

A. Yes, sir, to the States.

Q. Approximately how much was that?

A. Approximately $700,000.00.

Q. Now, with respect to ink, does the term Allocation, Times-Picayune Publishing Company have the same meaning as that used with respect to paper?

A. Yes, sir.

Q. Does this bar represent the actual amount of ink which was charged in the Times-Picayune Publishing Company's records to the States for ink?

[fol. 1178] A. Yes, sir.

Q. Approximately how much was that?

A. $11,000.00.

Mr. Wilson: Now, just a minute, please, Mr. Flurry. I understand that it is not being offered now because the heading is being changed, but I think I might save the Government some effort by making an objection which is over and above the general objection which I have reserved to all of this.

Now, my objection to this is that I am of the opinion that any Court that is required to pass on this case will be sufficiently literate that it can read the figures that are there,

and this picture adds nothing, means nothing, and, in fact, I understood Mr. Flurry to say that it added nothing to the situation.

I just object to cluttering up the record with a lot of useless bars and graphs.

The Court: You object to it as being repetitious?

Mr. Wilson: Not only being repetitious, but having no bearing on the issue, adding nothing, and having no bearing on the issue.

Mr. Flurry: Your Honor, in order to make the series of charts complete and, as I said in the beginning, we don't think this chart adds a great deal, but in order to picture the comparisons in the allocations made according to the percentages found from the records of the Company furnished to the FBI and the allocation ratios which Mr. Houghton has used, we think that they do portray something new as to the other charts. This chart was put in simply to complete the set as to all departments.

[fol. 1179] The Court: It makes no comparison with the other figures?

Mr. Flurry: No, Your Honor. We will be very glad to withdraw this chart, Your Honor.

The Court: Very well. That would leave a hiatus in the numbering.

Mr. Flurry: I have another document which I would like to substitute for that number.

Mr. Wilson: In that case, I move that Mr. Houghton's testimony in regard to this chart be stricken from the record, because it would be confusing——

The Court: I thought it might be simpler just to let this go in. You withdraw your objection, and you withdraw your withdrawal, and we will just let it stand.

Mr. Wilson: Very well, I will withdraw it.

By Mr. Flurry:

Q. Mr. Houghton, I ask you to refer to Government Exhibits 135 and 136. Will you state what Government Exhibit 135 is, Mr. Houghton?

A. That is a chart showing the departmental expenses for which the Times-Picayune and the Government are in substantial agreement——

Mr. Wilson: Wait just a minute, now, Mr. Houghton. The same objection is made to that caption.

[fol. 1180] The Court: I think the objection is sound.

Mr. Wilson: I move the answer be stricken.

The Court: The answer will be stricken.

By Mr. Flurry:

Q. I will ask you the question over, Mr. Houghton, as to what this chart is.

A. It is a chart showing a comparison between the allocations made by the Times-Picayune Publishing Company to the editorial, composing room, circulation and press rooms, such allocations being compared with Government's reallocations based on Man Hours, published pages and circulation.

Q. Is the chart on the easel the same as Government Exhibit 135 except for the size?

A. Yes, sir.

Q. What is the source of the data used in making Government Exhibit 133—I mean 135?

A. Government Exhibit 133-B.

Q. Now, Mr. Houghton, what is the meaning under Editorial, to what does that apply?

A. That applies to the editorial departmental expenses.

Q. And the title Composing Room is one of the departments to which we referred?

A. Yes, sir.

Q. And the same way with Circulation and Press Room?

A. Yes, sir.

[fol. 1181] Q. Now, on the left hand side you have Allocation, Times-Picayune Publishing Company opposite the first bar. What does that represent?

A. That represents or indicates that the bar refers to the actual costs for the editorial department which were allocated to the States by The Times-Picayune Publishing Company.

Q. And you have next Government Reallocation Based on, does that refer to the reallocations made by you to which you have just testified?

A. Yes, sir.

Q. Now, the bar opposite Man Hours, what does that represent?

A. That represents the cost to the States for the editorial department based on my reallocation which was, in turn, based on Man Hours.

Q. And Published Pages?

A. That represents the published pages, reallocation for the editorial department.

Q. And the bar opposite Circulation?

A. That represents the reallocation based on circulation.

Q. And those are the same three principle ratios which you used in Government Exhibit 133, is that right?

A. Yes, sir.

Q. Now, does that also apply to the bars represented under Composing Room?

[fol. 1182] A. Yes, sir.

Q. The first bar being the Times-Picayune Publishing Company showing in its own records?

A. Yes, sir.

Q. And the other three bars being yours?

A. Yes.

Q. According to Man Hours, Published Pages and Circulation?

A. That is correct.

Q. And in the circulation department, the first bar is that The Times-Picayune Publishing Company's ratio charged to the States?

A. That is the actual dollar volume that they charged to the States in the circulation department.

Q. And Man Hours, is that yours?

A. Yes, sir.

Q. Now, Published Pages, why is there no bar opposite Published Pages?

A. Because I substituted the circulation figures for that in the reallocation of that department.

Q. And Circulation is the bottom bar?

A. That is correct.

Q. Now, on the Press Room, does the first bar represent the Times-Picayune Publishing Company's Charge to the States?

A. Yes, sir.

Q. And the second is your Man Hours?

[fol. 1183] A. Yes, sir.

Q. And the third, your published pages?

A. Yes, sir.

Q. And the fourth, your circulation ratio?

A. Yes, sir.

Q. Now, Government Exhibit 136, state what that is.

Mr. Wilson: Just a minute, before you answer it. It is my understanding, Mr. Flurry, that the headings on all of these will be changed?

Mr. Flurry: That is right.

Mr. Kramer: Would it be proper if the Government might try to agree with the defendants as to what the heading should be?

The Court: If you can, yes.

By Mr. Flurry:

Q. Will you please state what 136 is.

A. That is a chart showing a comparison between the actual allocations made by The Times-Picayune Publishing Company and my reallocations based on Man Hours, Published Pages, and Circulation for the stereotype room, photo engraving department, and the mail room.

Q. Was the source of data used in this chart taken from Government Exhibit 133-B also?

A. Yes, sir.

Q. Is the chart on the easel merely an enlarged copy of Government Exhibit 136?

A. Yes, sir.

[fol. 1184] Q. Does this chart show similarly to Chart 135, which you have just explained, the same information with respect to the stereotype room, the photo-engraving department and the mail room?

A. Yes, sir.

Q. In each of those departments, does the first column or first bar represent the amounts charged by the Publishing Company to the States?

A. Yes, sir.

Q. And the second bar, in each instance, your reallocation according to Man Hours?

A. Yes, sir.

Q. And the third, according to Published Pages?

A. Yes.

Q. And the fourth, according to Circulation?

A. Yes, sir.

Q. Now, please turn to Government Exhibit 137.

(The document referred to was marked "G-137" for identification.)

Q. (Continuing.) I will ask you to state what Government Exhibit 137 is.

A. That is a chart showing a comparison between the allocations made by The Times Picayune Publishing Company to the States for the Advertising Department, compared with the Government's reallocations, based on Man Hours and Published Pages.

The Court: What number is that?

A. 137.

[fol. 1185] Mr. Flurry: I am sorry, Your Honor. That is 138.

The Court: What is that one marked, actually?

Mr. Flurry: I have it marked 138, Your Honor.

The Court: I think you called it 137.

Mr. Flurry: I did. I think we had better take 137 and keep them in order. They were out of order on the easel.

The Court: All right.

By Mr. Flurry:

Q. I will ask you, Mr. Houghton, what Government Exhibit 137 is.

A. That is a chart showing a comparison of the allocations made by The Times-Picayune Publishing Company and those made by the Government for the General, Office Expense, Fixed Charges and Maintenance Department.

The Court: Four captions: General, Office Expense, Fixed Charges——

Mr. Flurry: I wonder, Your Honor, if the counsel for the Defendants are in disagreement with this title, in which we say that we are in disagreement.

The Court: There has been no objection to this one, but I don't know.

Mr. Wilson: I would prefer that they omit all conclusions as to where we stand on that.

By Mr. Flurry:

Q. Mr. Houghton, is the chart on the easel the same as [fol. 1186] Government Exhibit 137, except for size?

A. Yes, sir.

Q. To which departments does Government Exhibit 137 refer?

A. To the General, Office Expense, Fixed Charges and Maintenance.

Q. Is this chart drawn in a manner similar to that as you have just stated with reference to the preceding chart?

A. Yes, sir.

Q. Does the first bar represent the amount which has been charged in the records of The Times-Picayune Publishing Company to the States in each of these categories of expenses?

A. Yes, sir.

Q. What is the meaning of the zero under Office Expense?

A. That signifies that the Office Expense Department was all charged to the Times-Picayune, morning and Sunday, and none of it was charged to the States.

Q. Now, I notice that this chart, Mr. Houghton, is somewhat different from the other charts which have preceded this, in that you have five bars in each instance; rather, six bars, including The Times-Picayune Publishing Company's allocation.

Will you explain the purpose for the six bars instead of the four bars, as on the other chart?

A. That is because, in these four departments, there was such a substantial difference between the amount of expenses which the company charged to the States and my reallocations that two additional standards were used as a [fol. 1187] check against the three basic standards, these

additional standards being Editorial or News Space and Advertising Space.

Q. Now, do the second, third and fourth bars represent the standard which you actually used in your final results?

A. That is correct.

Q. Namely, Man Hours, Published Pages and Circulation?

A. That is correct.

Q. And the last two bars of the six, in each instance, were not used in the final results reached, but used only as a check against the other three standards used?

A. That is correct.

Q. Now, please turn to Government Exhibit 139-A and B; 138, I am sorry; 138 instead of 139.

(The document referred to was marked "G-138" for identification.)

Q. (Continuing.) What is this chart, Mr. Houghton?

A. This chart shows a comparison between the amount of advertising expense charged to the States by The Times-Picayune Publishing Company and as reallocated to the States by the Government, based on Man Hours and Published Pages.

Q. Is this chart drawn in the same manner as that described for the preceding charts?

A. Yes, sir.

Q. What was the source of the data used by you in compiling this chart?

[fol. 1188] A. Government Exhibit 133-B?

Q. Is the chart on the easel the same as Government Exhibit 138, except in size?

A. Yes, sir.

Q. Now, I will ask you: Does this Advertising refer to Expenses or Income?

A. To expenses.

Q. Does that refer to the expenses in the Advertising Department?

A. Yes, sir.

Q. Is this chart formed in the same manner as the previous charts; namely, the first bar representing the percent-

age of advertising expenses charged to the States in the records of The Times-Picayune Publishing Company and Bars 2 and 3, representing your reallocations of those expenses, according to Man Hours and Published Pages?

A. That is correct.

Q. I note that opposite Circulation, you have not used a ratio.

To what do you refer there?

A. In the reallocation of the expenses of the Advertising Department, I followed the published-pages standard which in turn, was the proportion of the total lineage in the various advertising categories carried by the States and did not use the circulation ratio, itself.

Q. Now, please turn to Government Exhibit 139-A and -B.

I will ask you to state what Government Exhibit 139-A is. [fol. 1189] (The documents referred to were marked "G-139-A and -B" for identification.)

A. Government Exhibit 139-A is a tabulation showing data for chart entitled "Profit to States, According to Times-Picayune Publishing Company, Compared with Additional Expenses According to Government's Reallocations, 1949".

Q. From what data was Government Exhibit 139-A made?

A. From the data contained on Government Exhibit 133-B, and referring, especially, to the data included in the Columns 7 through 11 in Government's Exhibit 133-B.

Q. Now, will you explain the method of making tabulations in Government 139-A.

A. The Government Exhibit 133-B, in Columns 7 through 11, shows the differences, that is, in terms of the increases or decreases in expenses as compared with what had been allocated to the States by The Times-Picayune Publishing Company, department by department.

For the different departments where either there was practically no charge made by the Company to the States and in one other, where there was, in my opinion, an insubstantial charge or insufficient charge to the States, the increases or decreases have been—The increases, I should say, have been cumulated on this table, Government 139-A, to build up cumulative totals.

Q. Now, will you turn to Government Exhibit 139-B.

The Court: Where does this come from? 133-B?

A. Yes, sir.

[fol. 1190] The Court: I don't find that figure, the first figure, $302,000. Where is that?

A. That is your total, you see. That is added up. They start from the bottom, with the General Expenses, which is 105,657. Do you find that?

Column 7 opposite the General Expense side heading under the Man Hours Reallocation and the figures that are opposite Plot mean that these figures were plotted. They are cumulated, adding the expenses, one department after the other, until it becomes a cumulated total.

The Court: It does not include all of the departments?

A. No, sir, just these five departments.

The Court: I see.

By Mr. Flurry:

Q. Are these the five departments, Mr. Houghton, to which you referred as the Government being in substantial disagreement with the figures shown in the Company's records furnished to the FBI?

A. That is correct.

Q. Now, will you please state what Government Exhibit 139-B is.

A. That is a chart drawn from the data shown on Government Exhibit 139-A and showing the profits of the States, according to The Times-Picayune Publishing Company, compared with the additional expenses, according to the Government's reallocations, 1949.

Q. Is the chart on the easel, Mr. Houghton, the same as [fol. 1191] Government Exhibit 139-B, except in size?

A. Yes, sir.

Q. What purpose did this chart serve, Mr. Houghton, in making your study of the profit and losses of the States?

Mr. Wilson: Just a moment.

I object to the question of what purpose is served of making a study of the profits and losses, since he made a study of the profits and losses and then drew the chart from them.

He has got the horse before the cart.

Mr. Kramer: That is what he should have.

The Court: Could you rephrase the question?

By Mr. Flurry:

Q. Please explain how this chart was constructed and what its meaning in its various parts is.

Mr. Wilson: If the Court please, I object to the repetition on this chart. Apparently, the witness has testified three times as to what this chart is. Apparently, there is some theory that if you keep repeating it often enough, it makes it so.

We have been all through it, and I object to the repetition.

The Court: He can explain the chart. I think that is the purpose.

By Mr. Flurry:

Q. Will you explain the chart, Mr. Houghton?

The Court: I think the question is proper.

A. The chart shows the amounts, in dollars, on the left-[fol. 1192] hand portion of the chart; and, on the horizontal axis are shown the captions indicating the Government's reallocations, based on Man Hours, Published Pages, Circulation, Editorial News Space and Advertising Space.

The first bar on the lefthand portion refers to the profits of the States, according to The Times-Picayune Publishing Company.

The second, third, fourth, fifth and sixth bars represent the net additional expenses which the Government's reallocations indicate should have been added to the expenses of the States.

The lower portion of the bars to the righthand side of the chart indicate the additional expenses that should have been charged to the General Expense Department, according to the Government estimates.

Q. May I ask you a question, there?

A. Yes, sir.

Q. Do you mean by "additional expenses" the expenses which, under your allocation, based upon these various standards, should have been added to the expenses which the Company had charged to the States?

A. That is correct. These are all additive to the base figures which are charged to these departments by the Company.

Q. You may proceed.

A. The second portion of the bars represents the additional expenses that, according to the Government's reallocations, should have been added to the office expenses of the States.

The third portion represents the additional expenses that the Government believes should have been added to the [fol. 1193] Fixed Charges Department Expenses for the States.

The next section represents the additional charges for the Maintenance Department and the final section, additional expenses for the Advertising Department.

Q. Now, that chart only refers to the five departments in which you found a substantial variation between your reallocations and the expenses which had been allocated by the Company to the States?

A. That is correct.

The Court: What is the significance of those broken lines in between?

A. They merely connect the bars to aid the reader in seeing how one compares with the other.

By Mr. Flurry:

Q. Now, will you please turn to Government Exhibit 140-A and -B, Mr. Houghton.

(The document referred to was marked "G-140-A and -B" for identification.)

Q. (Continuing.) I will ask you to please state what Government Exhibit 140-A is.

A. That is a table for the chart entitled "Net Profit or Loss of States before Income Taxes, 1947 to 1950," according to The Times-Picayune Publishing Company and based on the Government's estimates, based on Man Hours, Published Pages and Circulation.

Q. From what did you take the data contained in Government Exhibit 140-A?

[fol. 1194] A. The data was secured from Government

Exhibits 133-A through Government Exhibits 133-D, inclusive.

Q. Do the figures appearing after each of the years in the left-hand column refer to the exhibits with respect to the respective years in Government Exhibit 133-A to -D?

A. Yes, sir.

Q. Will you state what Government Exhibit 140-B is?

A. That is a chart drawn from the data included on Government Exhibit 140-A, showing the net profit or loss of the States before income taxes in 1947 to 1950, according to The Times-Picayune Publishing Company and according to the Government's estimates, based on Circulation, Man Hours and Published Pages.

Q. Is the chart on the easel the same as Government's Exhibit 140-B, except as to size?

A. Yes, sir.

Q. I will ask you what the heavy black line at the top represents.

A. That line represents the annual totals of net profit shown for the States on the books of The Times-Picayune Publishing Company.

Q. For what years?

A. 1947 through 1950.

Q. Now, I will ask you to explain whether or not the point where the 1947 appears at the bottom, 1948, 1949, and 1950, represents the net profits or losses at those intersecting lines with the lines drawn across the chart.

A. Yes, sir.

[fol. 1195] Q. Does that represent the year's end?

A. It represents the profit or loss for the year, calendar year.

Q. And the figures on the left represent, in thousands of dollars, above the zero line, profit, and in thousands of dollars, below the zero line, loss?

A. That is correct.

Q. Now, what does the black, dashed line represent?

A. The black, dashed line represents the Government's estimates of the profit or loss of the States, 1947 through 1950, based on circulation, the circulation ratios.

Q. And the line with the connected, open circles?

A. That represents the Government estimates of the States' profit or loss, based on man hours.

Q. And the line with the connected, blacked-in circles?

A. That represents the Government estimate of the profit or loss of the States, based on Published Pages.

Q. Will you state, Mr. Houghton, what this chart shows with relation to the results obtained by the three methods of reallocation which you have used in previous tabulations?

A. The chart shows that the books of the Times-Picayune Publishing Company showed the States operating at a profit, although a declining one, for each of the years, 1947 through 1950. It also shows that the Government's estimates of the profits or losses of the States showed a similiar trend to those shown on the books of the Company, but that there was a substantial gap between the two figures.

[fol. 1196] Q. Do you refer to the gap level at which this line appears and at which the other lines appear?

A. That is correct, between the Company's figures and the Government's estimates.

It also shows that, whereas in 1947, according to the Government's estimates, the States had a profit ranging from approximately $50,000 to $150,000 on any one of the three standards the Government followed in 1947, in 1948, the States showed a slight loss on two of the standards followed by the Government and a loss of approximately $150,000 on the first standard.

It also showed that in 1949, on the basis of two of the Government standards, namely, Circulation and Man Hours, the States experienced a loss of approximately $100,000; whereas, on the third standard, it experienced a loss of nearly $200,000.

It also shows that in 1950 the loss of the States, according to the Government estimates, ranged from slightly more than $100,000 to $200,000 on the three standards which the Government followed.

Q. Now, Mr. Houghton, did you find from an examination of the records furnished to you by the FBI from The Times-Picayune Publishing Company certain year-end adjustments which had not been taken into consideration in the monthly statements?

A. That is correct.

Q. Can you state what those items were?

A. They included such factors as cuts and mats sold, which were an income item, and depreciation, which is an expense item.

[fol. 1197] It also included certain reserves for bad debts and doubtful accounts, which I couldn't understand being carried on both sides, both as an income and deduction; so, therefore, I didn't take them into account; however, they seemed to practically cancel one another off.

Q. Have you investigated that matter since you made these charts and tabulations?

A. Yes, sir.

Q. And is there any substantial change in the results which you would reach by taking those into account in these tabulations and by not doing so?

A. By a rough estimate, I have come to the conclusion they wouldn't effect the picture materially. They would show slightly less of a loss for the States in '48, '49 and a greater loss in '50 and in 1947, more of a profit; but the differences were not, in my view, very substantial or enough to warrant changing the structure of these estimates.

Q. I understood you to say that they were offset. You mean by that that the items which would have been additions to income and items which would have been reductions from income substantially offset each other?

A. Yes.

Q. Have you made up a tabulation since you came to New Orleans, with respect to those items?

A. Yes, sir.

Q. I show you Government Exhibit 143 and ask you if that is a tabulation of those adjustments.

[fol. 1198] (The document referred to was marked "G-143" for identification.)

A. Yes, sir.

Q. From what source were these figures taken?

A. From the Government exhibits taken from books of The Times-Picayune Publishing Company by the FBI.

Mr. Flurry: We offer in evidence Government Exhibit 143.

Mr. Wilson: May I inquire what 141 is?

Mr. Kramer: The letter from Ernst & Ernst.

Mr. Wilson: Thank you.

We will be supplied with a copy, I assume.

Mr. Flurry: Your Honor, some of these exhibit numbers at the very beginning—I offered the first two and not the others.

We would like to offer Government Exhibits 127 through 140-B, subject, of course, Your Honor, to an agreement on the titles or change of titles on the charts to which the Defendants object.

Mr. Wilson: And subject to whatever objection the Defendants may have after cross examining Mr. Houghton.

The Court: That is correct.

Are you ready to cross examine?

Mr. Wilson: I had just as soon start the first thing in the morning.

The Court: I think it might be helpful.

Mr. Wilson: I think I can organize my papers.

[fol. 1199] The Court: It is now twenty minutes to five, and I think we might stop for the day.

May I see you gentlemen up here, please.

(Bench conference.)

The Court: We will stand recessed until tomorrow morning at ten o'clock.

(Whereupon, at 4:40 o'clock, p. m., Wednesday, May 9, 1951, a recess was taken until Thursday, May 10, 1951, at 10:00 o'clock, a. m.)

[fol. 1200] PROCEEDINGS of May 10, 1951

(The trial was resumed, pursuant to adjournment, on Thursday, May 10, 1951, at 10:00 o'clock, a. m.)

Mr. Phelps: If the Court please, counsel for the Government and the defendants would like, at this time, to recall Mr. Leeming to the stand, if it meets with the Court's approval, to complete the cross examination in connection with "G-125" which was admitted subject to objection of defendants and subject to cross examination.

FRANK LEEMING recalled as a witness on behalf of the Government, having previously been sworn, was further examined and testified as follows:

Cross examination.

By Mr. Phelps:

Q. Mr. Leeming, as I understand it you are employed by the Item?

A. Yes, sir.

Q. What is your position again?

A. Advertising Director.

Q. And did you work with the Government in connection with the preparation of any charts?

A. Not with any charts. I prepared this table of figures that was under discussion the other day.

Q. Is that the only contact that you have had with this case?

A. Directly, I believe; yes, sir.

Q. Referring to Exhibit 125, I believe you furnished de- [fol. 1201] fense counsel with an itemization of the accounts as computed by you, which were supposed to be retail accounts in the classifications Automotive and Financial, for the years 1949 and '50. Is that correct?

A. That is correct; as measured by the Item.

Q. And your procedure was to take the Media Records, Automotive Classification, and to deduct accounts which you classified as retail. Is that correct?

A. From the Media Records, Yearbook; yes, sir.

Q. Do you feel qualified to say which accounts are retail and which are general in the Automotive and Financial classifications?

A. Yes, I do.

Q. Did you have any assistance in breaking down those accounts?

A. Yes, sir.

Q. Who assisted you?

A. Mr. Zaring, our Retail Advertising Manager, (Mr. John Zaring) and Mr. Saux, the Office Manager.

Q. That was true on Automotive and Financial, both, was it?

A. Yes, sir.

Q. How long did that preparation take you, altogether?

A. I didn't measure it in hours. I would say several days, not working all the time on it.

Q. Ten hours?

A. I don't know.

Q. With reference to the automotive accounts for the year 1949, you did not include in your list of retail accounts [fol. 1202] Auto Parking Operators Association. Isn't that, in fact, a retail account?

Mr. Kramer: Excuse me. I didn't hear what the account was and I want to follow it.

Mr. Phelps: Auto Parking Operators Association.

A. Do you mind if I refer to the yearbook?

By Mr. Phelps:

Q. Not a bit. You refer to anything you want to.

A. That is '49?

Q. '49, Automotive.

A. And the name of the account again?

Q. Auto Parking Operators Association.

A. Yes. That is a local account, Mr. Phelps, but there was not enough space used to earn a retail rate. In other words, the first bracket in a retail rate card is a thousand lines or more, and up to a thousand lines they pay the open rate, which is the same as general; so we did not deduct that.

Q. But in fact it is a retail account?

A. It is a retail account, but they paid national rates.

Q. Which is the same as retail?

A. Which is the same as national.

Q. But your retail and national rates were the same within that category?

A. Yes, sir.

Q. In point of fact, it is a retail account?

[fol. 1203] A. It is a retail account, but it did not use enough space to earn a retail rate.

Q. That is only because your retail rate and general rate are the same within that category, isn't it?

A. That is correct.

[fol. 1204] Q. So that you could have classified it either as retail or as general and you would have earned the same rate?

A. That is correct.

Q. And it is, in fact, the retail account?

A. Yes, sir.

Q. The same is true of Auto Radio Shop, isn't it?

A. Auto Radiator Shop?

Q. Auto Radiator Shop. Excuse me.

A. Yes, sir, and the same yardstick applies there. It only used 222 lines in the whole year.

Q. The same is true of Barcelona Service Station?

A. Yes, sir.

Q. The same is true of Glo-Kar Paint and Body Company, isn't it?

A. Yes, sir.

Q. Marine Oil Company?

A. Yes, sir.

Q. Piston Ring Service Company?

A. Excuse me a moment. Marine Oil Company?

Q. Yes, sir.

A. No. That is not true.

Q. You treat that as a general account?

A. I believe so, yes, sir.

Q. Would you tell us the reason why?

A. I can't tell you the reason why, no, sir.

[fol. 1205] Q. You don't know, then?

A. I don't know on that particular account; but, in the judgment of the three of us who went over their list, it was considered a new account.

Q. But you, yourself, as a witness, don't feel that you are in a position to say whether it was correctly classified as a retail or as a general account, do you?

A. To the best of my ability; it was classified as a national account.

Q. Would you give us the reason why you believe it should have been classified as a national account?

A. Simply that it is an oil company and probably not selling at retail.

Q. You don't know whether it is selling retail or not, do you?

A. No, sir.

Q. Suppose it were selling at retail, shouldn't it be classified as a retail account?

A. If they have a retail store in New Orleans, yes, sir.

Q. And your answer is you don't know whether they have a retail store or not?

A. That is right.

The Court: What oil company is that?

Mr. Phelps: Marine Oil Company.

A. Marine Oil Company.

The Court: St. Charles and Terpsichore?

[fol. 1206] Mr. Phelps: That is right.

By Mr. Phelps:

Q. Piston Ring Service Company. Isn't that a retail account?

A. Yes, sir.

Q. Bosjo's Minute Man. Is that a retail account?

A. Minute Man. I don't see it.

Q. It is in Miscellaneous.

A. Yes, sir. That is retail.

Q. Louisiana Tire & Furniture Company. Isn't that a retail account?

A. Yes, sir.

Q. Riverside Tire & Supply Company. Isn't that a retail account?

A. Yes, sir.

Q. Harry Stevens. Isn't that a retail account?

A. Yes, sir.

Q. Simonize Station. Isn't that a retail account?

A. I don't see that in the book, Mr. Phelps. What was the name? Simonized——

Q. Simonized.

A. I am sorry.

Q. Look under Garages, if you please.

A. Yes, sir. The Simonized Station.

Q. Simonized Station?

A. Yes, sir. That is correct.

[fol. 1207] Q. Now, you didn't include a single one of those retail accounts in your list of Automotive Accounts for the year 1949, did you?

A. That is right.

Q. According to my information, those accounts totaled some 5393 lines.

The Court: You mean, they were not included, originally? Just what do you mean, "They were not"?

Mr. Phelps: I mean, if the Court please, they are retail accounts which were not included in his list; therefore, they were not deducted from the Media Records' figures.

That had the effect of making the Automotive, General, for 1949 larger than it, in fact, should have been, resulting in a greater differential between '49 and '50.

In other words, if the accounts are, in fact, retail and the lineage is as I have it, then, his increase, '50 over '49, should have added to it the sum of 5300 lines.

The Court: These lines were not included in the 359,009 lines which were deducted from the original.

Mr. Phelps: That is precisely correct, Your Honor.

Mr. Kramer: I, myself, am not clear, Your Honor.

Is it counsel's contention that the deduction from General Automotive for '49 should have been greater than it was?

Mr. Phelps: That is, the deduction for the retail account should have been greater by some 5393 lines.

Mr. Kramer: So that the amount of general advertising [fol. 1208] in the Automotive field for the item for 1949 would be smaller than is showa here?

Mr. Phelps: Would be less. That is correct.

Mr. Kramer: If your theory is correct, by 5390 lines?

Mr. Phelps: That is correct.

By Mr. Phelps:

Q. In order to get into the record the lineage for the various accounts which you failed to deduct or failed to include as retail, I would like to rename those accounts, give you my lineage figures and ask you if that isn't correct, in accordance with Media Records.

A. Could I ask a question, first, Mr. Phelps?

Mr. Phelps: If the Court will permit it.

The Court: All right.

A. We were trying to determine what figures should be used in making this tabulation, whether to use all retail

lineage, as such, or to use those accounts which paid retail rates, and we came to the conclusion that it would be a more accurate picture to use the accounts in the retail classification who used enough space to earn a retail rate, and that is the reason this list of accounts was not included.

[fol. 1209] Q. Both rates were the same; under a thousand lines?

A. Yes, sir.

The Court: I cannot understand that method. If it was actually retail, what difference does it make that it took the general rate? If you figured it on the money side of the picture, I could understand that perhaps.

A. Well, that was the probable reason why we didn't include it. I was just taking the accounts who paid retail rates for the space used.

The Court: All right. That was the reason this was done?

A. Yes, sir.

By Mr. Phelps:

Q. Mr. Leeming, will you follow me in Media Records while I get this lineage into the record. Correct me if I misstate the lineage figures for the automotive for 1949.

Auto Parking Operators Association, 680 lines.

Mr. Phelps: Let's ask him if it is correct each time. Is that correct?

A. Yes, that is correct. I will stop you if they don't agree.

Q. Auto Radio Shops, 2202 lines; Barcelona Service Station, 654 lines; Glo-Kar Paint & Body Company, 450 lines; Marine Oil Company, 1588 lines; Piston Ring Service Company, 198 lines; Simonize Station, 100 lines; Louisiana Tire & Furniture Company, 152 lines.

[fol. 1210] A. Just a minute, 'til I find that, please. 152?

Q. Yes, sir.

A. Correct.

Q. Riverside Tire & Supply Company, 210 lines; Bosio Minute Man, 314 lines; Harry Stevens, 825 lines; do the

finecage figures which I gave you check with Media Records automotive, 1949?

A. Yes, sir.

Q. So that if my totals are correct, that is 5593 lines of retail advertising which you did not deduct from the Media Records automotive classification for the year 1949 in computing the general, is that correct?

A. That is correct.

Q. Did not you, in fact, include among the retail accounts a substantial number of accounts which are more properly classified as general?

A. Classified as general rather than financial?

Q. As I understand it, the financial category includes some retail and some general, isn't that true?

A. There is some retail included in the financial classification of Media Records.

Q. And you have made a list which purports to give the retail accounts, haven't you?

A. Yes, sir.

Q. I am asking you if you have not, in fact, included a number of general accounts in with those retail accounts? For instance, Douglas L. Black Mortgage Company, [fol. 1211] isn't that a general account?

A. No, sir, that is a retail account.

Q. Would you tell us the reason why you consider that as a retail rather than a general account?

A. Well, probably over a period of years, it has been so classified by the management of the Item.

Q. I am not interested in what the management of the Item has done. I am interested in the reason why you consider that to be a retail rather than a general account.

A. Well, Mr. Phelps——

The Court: What you are talking about now is 1950?

Mr. Phelps: I am talking about financial for 1950, if the Court please.

A. Our method of checking these was to go through the list and check against our contract records, and if an account was paying a retail rate, we so listed it, which I think is the best reason in the world for using it.

By Mr. Phelps:

Q. Well, we found out, Mr. Leeming, wherein that led the Item Company into error as far as automotive is concerned——

Mr. Kramer: I object to that. There has been no showing of error of any kind.

Mr. Phelps: There has been a showing of error, in my opinion, and I think in the Court's opinion, in so far as judging what rates were charged by the Item. We are here [fol. 1212] concerned with the effect, if any, of the unit rate on general advertising, and it is wholly immaterial to me what the Item has done. It is a question of what they should have done.

Mr. Kramer: I trust that the Court's mind will not be made up until after the witness' full testimony is heard.

By Mr. Phelps:

Q. Would you give us the reasons why Douglas L. Black Mortgage Company should be classified as a retail account, if you know?

A. Well, the only reason I know is that they have been on a retail contract, and have been charged retail rates, and I, therefore, put them down on this list.

Q. But you don't really know the distinction between them, do you?

A. Apparently not, from your questions.

Q. Well, you either do or you don't. Do you know the way to distinguish retail from general accounts in the financial classification?

A. Yes, sir. The houses of business who do local business have been charged retail rates, and there are several mortgage companies, there are several savings and loan companies, there are several finance companies, and homestead associations, and so on, that have paid retail rates.

Q. Isn't it a fact that all investment houses pay a general rate?

A. All investment houses?

Mr. Kramer: We object to that. The question isn't [fol. 1213] specific enough. To whom do they pay that rate?

Mr. Phelps: I will withdraw that question.

By Mr. Phelps:

Q. Isn't it correct to say that investment houses which run advertising in newspapers in New Orleans are supposed to pay a general rate?

Mr. Kramer: Objection on the ground that it hasn't been shown that he knows what any newspaper other than the Item does.

Mr. Phelps: I think the question is proper.

The Court: Please read the question back.

(Question read by reporter.)

The Court: He can answer the question. Objection is overruled.

A. It is not true of the Item. There are this many financial companies who pay the retail rate.

By Mr. Phelps:

Q. Your answer is that the Item does not charge the general rate to investment houses?

A. To these investment houses.

Q. I am not asking you about any particular investment house. Can you think of any reason why there should be a difference between one investment house and another as to the rate charged?

A. Well, are you including banks in that?

Q. Don't you know the difference between an investment house and a bank?

[fol. 1214] A. Yes, sir. The stock brokers offices——

Q. Do you draw any distinction as to the rates paid by different types of investment houses?

A. Well, I am a little bit confused. I had better answer I don't know because——

Q. As a matter of fact Wilfred G. Gehr is an investment house, isn't it?

A. Yes, sir.

Q. You charged them the general rate, didn't you?

A. Yes, sir, because they didn't use enough lineage to earn a retail rate. The same reason as we were discussing in the automotive.

Q. But your answer is now that you don't know whether investment houses bear a retail rate or a general rate?

A. Well, I believe I see now what the question was. Yes, we charge the same bracket of rates to all investment houses providing they use enough lineage to earn a retail rate.

Q. What about Ernest A. Carrere & Sons which ran 423 lines. Isn't that a general account?

A. Yes, and it should be included.

Q. You say it is a general account?

A. No, sir. That should be classified as a retail account.

Q. Would you tell us why that is?

A. I have it included, Sir, as a retail account.

Q. I am asking you why you classify it as a retail account.

A. Well, my only answer, Mr. Phelps, would be that [fol. 1215] they had had a retail contract and had paid that rate and had been so classified.

Mr. Kramer: Excuse me. I didn't get the name of that account.

Mr. Phelps: Ernest A. Carrere & Sons.

By Mr. Phelps:

Q. Dane & Northrup, isn't that properly classified as a general account?

A. Isn't that classified as a—what, Sir?

Q. A general account.

A. No, sir, we consider it a retail account.

Q. Delta Mortgage Company, is that retail or general?

A. That is retail.

Q. What about Miller Mortgage Company?

A. That is also retail.

Q. Let me see if I understand you. Do you just classify these as retail or general depending on whatever you want, or does it make a difference in the rate?

A. Not necessarily what I want. We inherited a lot of rate structures here, Mr. Phelps, which we have tried to follow through with and the past management apparently saw fit to charge the companies a retail rate, and we inherited that rate structure, and we have had to follow through with it.

Q. Surely you understand my position, Mr. Leeming. I am not concerned with what the Item has done. I am con-

cerned with whether, in fact, these accounts should be [fol. 1216] classified as retail or general or, to put it otherwise, I am concerned with whether these accounts could be affected by the unit rate which The Times-Picayune Publishing Company put in on February 1, 1950?

A. Yes, sir.

Q. And that is why I am not concerned with what the Item has done. I want you to define for me, if you can, the difference between retail accounts and general accounts within the financial classification.

A. Well, the only thing that is made up on this list are the accounts that have paid a retail display rate.

Q. Your answer is that you don't feel qualified to differentiate on any other basis than what the Item has, in fact, done, is that correct?

A. As far as this list is concerned, yes, sir.

Mr. Phelps: If the Court please, Mr. Kramer has sought the instruction of the Court from time to time. I am frankly at a loss to know whether to strike this exhibit or to simply let this testimony show how little weight it is entitled to. Would the Court be interested in directing me in that regard?

Mr. Kramer: May I make the suggestion that we wait until after the redirect examination is over?

The Court: Very well.

Mr. Phelps: I have no further cross-examination.

[fol. 1217] Redirect examination.

By Mr. Kramer:

Q. Mr. Leeming, let us begin at the beginning. Do you remember whether the idea of getting up Government Exhibit 125, which I think you had better have in your hand if we are going to talk about it, was your idea, or was it the idea of someone in the Department of Justice?

A. This was the idea of someone in the Department of Justice.

Q. Now, please tell the Court exactly what the Department of Justice requested you to do in so far as you know respecting preparation of "G-125".

A. Well, I was told that the automotive and financial

figures, as reported by Media Records, would have to be brought into an accurate picture by deleting from those figures the accounts which were charged at retail rates.

Q. Charged by whom?

A. By the Item at retail rates, and I simply went through the year books of 1949 and 1950 and checked with our contracts and our records of the paper to see which of those accounts paid a retail rate and made a list of them, and deducted it from the figures in the automotive total.

Q. Now, you say you checked certain volumes. Do you mean volumes of Media Records? You mentioned checking volumes.

A. No, I said checking certain records and contracts.

Q. And what records and contracts did you check, those [fol. 1218] of Media Records or those of the Item Company?

A. Those of our own office files.

Q. You, however, I take it—well, I had better ask you—do you know how the States or the Times-Picayune keep their books?

A. No, sir.

Q. So that, as I understand it, all the columns on Exhibit "G-125" that relate to the Times-Picayune and States are based upon the assumption, are they not, that if they charged them the way you do, it would come out this way, is that right?

A. That is correct.

Q. The only one you know anything about is the Item column, isn't that right?

A. That is right.

The Court: Have you offered this yet?

Mr. Kramer: I haven't offered them yet. He prepared the exhibit and it was handed to me in that form.

The Court: Have you given it a number and has it been tentatively offered?

Mr. Kramer: It is numbered "G-125", Your Honor, but I am not offering that. Your Honor is free to strike them out. I had hoped I might get agreement on this, but I see we are not going to get it.

The Court: Was he not questioned on direct concerning all three columns?

Mr. Kramer: Yes, he was, and he explained that he [fol. 1219] merely made them up on the assumption, whether true or not, that the States and the Times-Picayune charged them the same way.

The Court: In other words, that they had inherited it the same way he had inherited it?

Mr. Kramer: Yes, sir.

Mr. Phelps: If the Court please, I would like to have the record show that we feel the testimony of the witness regarding the Times-Picayune account is equally without foundation. As a matter of fact, there is a slight mistake of 100,000 lines on the State's accounts.

Mr. Kramer: I don't like that word "without foundation". He testified that all he did was prepare them on the assumption which we now know is contrary to facts, that the T-P and the States charged them the same as the Item. I won't offer the States and the Times-Picayune accounts, but I will offer the Item columns on redirect.

By Mr. Kramer:

Q. Now you were asked about the financial, 1950. You were asked about four accounts: Carriere's, Dane & Northrup, Delta Mortgage and Miller Mortgage:

Did I understand your testimony to be that those four accounts are carried on the books of the Item Company and charged as retail display accounts?

A. Yes, sir.

Q. And is that true of all the others on the worksheets to which Mr. Phelps was referring?

A. Yes, sir.

[fol. 1220] The Court: Do I understand Media Records carries Automotive and Financial as general?

Mr. Kramer: No.

The Court: Separate classifications?

Mr. Kramer: Separate classifications; and we, therefore, have to decide, in view of the examination on cross examination of Mr. Houghton, just which would be general and which would be retail. I might say, this is not testimony.

The Court: It seems to me it would be whatever they wanted to call it.

Mr. Kramer: Whatever each paper charges, by its records, Your Honor. He has looked at his bills and he has looked at his rate cards.

The Court: All right. I understand.

By Mr. Kramer:

Q. Now, with respect to the accounts for Automotive, 1949, that were read to you by Mr. Phelps, the lineage of which totaled 5,390; do I understand——

The Court: Let me understand something, first, if you don't mind.

Mr. Kramer: Yes, sir.

The Court: Do I understand it is the Government's contention that advertising is general or local, according to the way it is charged? Does the charging fix whether it is general or not?

Mr. Kramer: I would like to answer that question at [fol. 1221] some length, because that gets at the heart of what I am trying to get at.

The Government, by these charts, can only be properly trying to show one thing: That is the effect of the morning-evening unit rate by the defendant corporation upon (a) advertisers, and (b) the Item.

It is the Government's contention that the general classification in Media Records gives an accurate picture of that effect, whatever it may be. The suggestion was made, on cross examination, that if Automotive and Financial be included in general, the picture would have been different. And the answer to that is that the picture would have been different, but not all of Automotive and Financial are subject to the unit rate. Therefore, to judge the effect upon Automotive and Financial of the unit rate you have to find out for the States, for the Times-Picayune, and for the Item which were charged the general rate and which were charged the retail display rate.

The Court: I don't see that the rate charged in general determines whether it is general or retail. That is a question of fact, isn't it?

Mr. Kramer: That is correct, Your Honor.

The Court: According to your theory, it seems to me if they charged retail rates for all general advertising there

would be no general advertising. It would all become retail.

Mr. Kramer: That is right, Your Honor. Let me go on.

The Court: I should say, what would otherwise be general.

Mr. Kramer: Yes. Now, at this late date in the trial, [fol. 1222] we (meaning the Government) could not possibly get access and go through the books of the Times-Picayune and the States to determine which of these various accounts that the Item deducts because they are retail, the Times-Picayune and States deduct, but my thought was, as a lawyer, that we would at least shift the burden of proof on the defense to show that they charge the unit rate, the forced combination rate, to some of the accounts which this man classifies as retail. To the extent, and by that amount, the deductions which this man makes, Mr. Leeming, would not be able to be made to show the effect of the combination rate.

But if they also deduct the Automotive accounts because they are charged the retail rate over at the Times-Picayune Publishing Company the deductions would be proper because that would not show the effect of the unit rate.

If the Court please, I am only trying to be clear. If I haven't been clear I hope you will badger me until I at least get my contention over.

The Court: I don't intend to badger you.

Mr. Kramer: "Badger" is the wrong word: Argue with me, or ask me to be clear. I only want to be clear.

The Court: I don't understand this shifting of the proof I would like you to repeat what you said about that.

Mr. Kramer: We introduced a chart showing the General display lineage sticking to Media Records.

The defendants, by cross examination of Mr. Houghton, suggested if you wanted to determine the effect of the unit [fol. 1223] rate upon the Item you had better be concerned with General plus part of the Automotive and Financial. The question is, what part and how big a part?

I can only show now, in my case in chief, with the time that is left to us, what the Item would deduct from their accounts as being retail display from the Automotive and Financial. And it was my thought, perhaps erroneously,

The Court: Only that balance then would be the balance and subject to the unit rate?

Mr. Kramer: And subject to the unit rate. That would be what they would be competing against, exactly.

The Court: How does your showing what the Item does throw any burden on your opponents? Do you want to suggest the Picayune and States were doing the same thing, when they were not?

Mr. Kramer: We don't know whether they have or not.

The Court: I thought you said that the Picayune and States have not followed the same structure.

Mr. Kramer: Mr. Phelps so states. It is up to him to prove it. By the linkage he can take off of their accounts, that the Times-Picayune and States also carry, I suppose he might have something. I don't think he is going to get off very much. (That is not testimony.)

Of course, the way this should have been handled, in my opinion, counsel for the Government and defendant should have gotten together and worked it out. It came up late in the trial and we didn't anticipate it.

The Court: Maybe this is one of the things that cannot [fol. 1224] be worked out. Maybe the Government would like for it to be.

Mr. Kramer: No, Your Honor. I say, Your Honor, that depends upon your estimate of counsel. I have tried to try this case, representing the Government.

The Court: I have no quarrel with that at all. It may be just one of those situations where counsel for respective sides are so far apart that they could not work it out.

Mr. Kramer: I doubt it. I think if we could sit down we would be able to agree.

The Court: I think I understand your position.

Mr. Kramer: Just a moment. (Confers with associate.)

By Mr. Kramer:

Q. Will you take your 1950 book for Automotive and go over the same accounts that you were asked about for 1949?

A. In Automotive or Financial?

Q. In Automotive. Are you ready?

A. Just a moment.

Q. I will give you the name of the accounts and I want you to read the linkage.

A. All right, sir.

Q. I notice you do not have Auto Parking Operators Association listed as one of the accounts you deducted from Automotive in 1950. What is the reason for that?

A. The name of the account again, please?

Q. Auto Parking Operators Association.

[fol. 1225] A. They did not run any advertising, apparently, in 1950.

Q. In the Item.

A. In the Item.

Q. That is all I want to know about: in the Item.

Auto Radiator Shop. I notice that isn't one of the deducted accounts in Automotive for 1950. Did they run any space in the Item in 1950?

A. Apparently not.

Q. According to Media Records. Is that what you mean by "apparently?"

A. I can't find it.

Q. Barcelona Service Station. Did they run any advertising in the Item in 1950?

A. No, sir.

Q. As shown by Media Records.

Glo-Kar Body. Do the Media Records you have before you for 1950 show whether they ran any advertising in the Item?

A. No, sir; I see nothing.

Q. Marine Oil Company. Did they run any advertising in the Item in 1950, according to Media Records?

A. No, sir.

Q. Piston Ring Service Company. Did they run any?

A. No, sir.

Q. Bosio's Minute Man?

A. Yes, sir. They ran 140 lines.

Q. Thank you. That was in 1950?

[fol. 1226] A. In 1950.

Q. In the Item.

A. Yes, sir.

Q. Louisiana Tire & Furniture Company. Did they run any advertising in the Item, according to Media Records, in 1950?

A. No, sir.

Q. How about Riverside—I don't have all the name of that.

A. Riverside Tire & Supply ran 195 lines in 1950.
Q. In the Item?
A. Yes, sir.
Q. Harry Stevens: did he run any?
A. Yes, sir, 168 lines.
Q. In the Item, in 1950.
A. Yes, sir.
Q. And Simonize Station: the last one.
A. Ran nothing.
Q. In the Item in 1950.
A. That is right.
Q. Now, one more question. Perhaps I have asked you; if so excuse me. These four accounts in Financial, for 1950: Carrere's, Dane & Northrup, Delta Mortgage, and Miller Mortgage Co., Inc.: were they treated with respect to the rate they carried by the Item in 1949 the same way they were treated in 1950?
A. Yes, sir.

Mr. Kramer: No further redirect examination.

[fol. 1227] Recross-examination.

By Mr. Phelps:

Q. Mr. Leeming referring to the Ernest A. Carrere's Sons account, Financial, 1950, you can look at Media Records and tell that that ran as a unit in the Times-Picayune-States, can't you?
A. The Ernest A. Carrere account? in 1950?
Q. Yes.
A. According to Media Records, it ran 4,423 lines in the Item and no other advertising.
Q. What about in 1949?
A. In '49 it ran 6545 lines in the Item, 19 lines in the Sunday Times-Picayune.
Q. Well.
A. I'm sorry.

Mr. Kramer: Did you want Sunday lineage?
Mr. Phelps: It doesn't matter.
Mr. Kramer: No Sunday lineage. This is a daily table.

A. Do you want the rest of the lineage, Mr. Phelps?

Mr. Phelps: No; that's all right.

By Mr. Phelps:

Q. Mr. Leeming, can't you look at the Financial accounts for 1950 and tell by looking at the Media Records accounts that the Times-Picayune classified investment houses as General, just by the lineage records?

Mr. Kramer: General, for whom?

[fol. 1228] The Court: Who classified them so?

Mr. Phelps: Times-Picayune Publishing Company.

A. No, sir; I don't believe I could, sir.

By Mr. Phelps:

Q. You could look down the accounts and see that they ran equal lineage in the Times-Picayune and States.

A. That is not true.

Mr. Kramer: As to which accounts?

Mr. Phelps: As to investment accounts.

A. No, sir. Would you like me to refer to one?

By Mr. Phelps:

Q. If you like.

A. I am looking at Central Savings & Loan.

Q. That is not an investment account; that is a homestead.

A. Yes, sir.

Q. That is a different classification.

A. It is all under "Miscellaneous."

Q. But investment houses are distinguished from homesteads, aren't they? I think everybody treats a homestead in the same category, don't they?

Mr. Kramer: Mr. Witness, you have been asked a question. You had better answer it. Would you read it back to him?

(The Reporter read the last question.)

A. Yes; that is right. They are distinguished.

Mr. Kramer: There are two questions there. He says [fol. 1229] they are distinguished from homesteads; you

say they are distinguished. He says everybody treats homesteads in the same category. If you understand the question, answer it.

Mr. Phelps: I think he has already answered it.

By Mr. Phelps:

Q. What about the Wilfred Gear? Can't you look at the Wilfred Gear for 1950 and see that the Times-Picayune treated that as General?

A. The only thing that appears in Media Records is approximately the same lineage ran in both papers.

Q. Is that true as to all investment accounts, with the exception of some minor accounts that might be accounted for in the month of January?

A. Well, I haven't studied them over for that.

Q. That is all right.

Mr. Phelps: Just to keep the record clear, counsel for the Government has indicated there were only four accounts on Financial and it is quite possible I only took up four, but I would like to get, as long as the matter has been raised, all of the accounts into the record which we consider as General accounts.

By Mr. Phelps:

Q. I ask you to check the lineage for me on these accounts as I go along: Financial, for 1950.

Mr. Kramer: For what newspaper?

Mr. Phelps: For the Item.

[fol. 1230] By Mr. Phelps:

Q. Douglas L. Black Mortage Company, 1468

A. Excuse me just a minute, Mr. Phelps. (Checking)

Q. Financial, 1950.

A. Yes.

Q. Ernest A. Carrere, Son's, 4423; Dane & Northrop, 1474; Delta Mortage Company, 1477; Miller Mortgage Co., Inc., 1425; The Mortgage Corporation, 1589.

A. Which one was that, Mr. Phelps?

Q. The Mortgage Corporation, 1589; Standard Mortgage Corporation, 1555.

According to my information they total 13,411 lines.

A. Yes.

Q. You are checking from Media Records, 1950, aren't you?

A. Well, I was checking from my list.

Q. I see. But that is a 1950 list?

A. Yes, sir.

Mr. Phelps: We have no further examination.

Mr. Kramer: No further examination, Your Honor.

(Witness excused.)

[fol. 1231] Mr. Kramer: Are you ready for Mr. Houghton?

Mr. Wilson: Yes, sir, if Mr. Houghton is ready.

Mr. Kramer: Mr. Houghton, please.

HARRISON F. HOUGHTON resumed the stand and testified further as follows:

Cross-examination.

By Mr. Wilson:

Q. Mr. Houghton, how old are you?

A. Thirty-nine.

Q. I understand this is the first time that you have ever appeared as a witness in a law suit. Is that right?

A. Yes, sir.

Q. Well now, I have got quite a few questions to ask you; and I don't want to get my answers wrong. I want you to take your time; and, if you don't understand my question, just ask me again and I will try to state it so you can understand it.

We will see if we can't help the Court out just as much as we can in trying to understand this case.

Would you do that for me?

A. Yes, sir.

The Court: He didn't seem to have any difficulty in understanding yesterday. I don't think we need to anticipate that.

By Mr. Wilson:

Q. Mr. Houghton, I believe you said you went to Drake University and you had a number of courses in accounting there.

[fol. 1232] A. That is correct.

Q. Now, you took graduate work after you graduated from Drake?

A. Yes, sir.

Q. Did you take any accounting courses in your graduate work?

A. No, sir.

Q. What degrees did you obtain in your graduate work?

A. No degrees.

Q. Have you ever worked at accounting at all?

A. I used accounting background in a great many phases of my work. For example, while I was with the National Industrial Conference Board, I was charged with the examination of financial statements, to analyze them and to ascertain profit trends, to build up series on general business economic conditions, and that sort of thing, so that I had a great deal of work in that field in the financial analysis part of the accounting business.

I also, at the Conference Board, played a fairly important role in the preparation of a new series of economic series on orders and inventories, one of the first that had ever been developed in this country.

In that connection, I had to talk with lots of accountants, in order to determine just how they might keep their records in accord with this project that the Board had developed.

Then, with the Government, I had occasion to work, particularly in connection with the statistics of income material [fol. 1233] on accounting, which covers the figures on balance sheets and profit and loss, and that sort of thing, for all types of corporations—manufacturing, mining, and so on.

I also did considerable work on financial statements that the Federal Trade Commission had. I had very close contact with the accountants there.

The Federal Trade Commission, Bureau of Industrial Economics, is divided into three branches: the economics, the accounting, and the financial reports sections.

Now, I was one of the economists there, but I had very close contact with the financial reports section, which gathered reports from all over the country from manufacturing concerns and analyzed them.

In connection with the enforcement of the Robinson-Patman Act, there were occasions for me to consult with the accounting section of the Commission, so that a considerable portion of my time at the Commission was having relationships with the accountants.

Q. But you weren't employed as an accountant, were you? You were employed as an economist?

A. My Form-57 has me as an economist with the Government. That is true.

Q. And I believe that is what you were with the National Industrial Conference Board?

A. Well, there was no specific title there. I was considered an economist.

[fol. 1234] Q. Uh-huh.

A. I was Chief of the Business Research Department there.

Q. And that was while you were still taking these graduate courses, wasn't it?

A. Well, no. That was after I had completed the major portion of my graduate work at Columbia, and I was only taking a few night courses occasionally, then.

Q. That is when you were taking courses over at the New School of Social Science?

A. Yes.

Q. Well then, I would be correct in saying that all of your academic training in accounting was while you were in college?

A. That is correct.

Q. What training you have had since or, rather, what work you have done since then in connection with accounting has been your contacts as an economist or statistician with various accountants in various phases of your work?

A. Yes, particularly with the financial analysis phase. I haven't been involved in the bookkeeping part of the accounting profession; that is, I haven't compiled——

Q. Yours is more——

A. Analytical.

Q. The statistical and analytical side of the accounts are handed to you?

A. Yes, sir.

[fol. 1235] Q. In other words, as an economist, you do about the same thing that a lawyer does in the Trade Commission, don't you? I mean: They both have contacts with the Accounting Department.

A. I think that would be denied by all the economists.

Q. And probably by all the lawyers.

Now, what, specifically, has been your experience in the newspaper business?

A. Well, I once was a carrier for the Des Moines Register Tribune and the Des Moines Capital, but that is the extent of my newspaper business experience.

Q. Have you had experience with newspaper accounting?

A. Well, I think I have had quite a bit of experience in the last three months.

Q. Had you ever had before the last three months?

A. No, not directly with newspaper accounting.

Q. Well, I would gather from your testimony that that is a rather specialized field.

I heard you refer to some man here as being a newspaper accountant. I take it that is more or less a field of its own, isn't it, Mr. Houghton?

A. Well, like many other fields, it is a field of its own, yes. There are specialists in all fields, I think.

Q. And probably if you went into a study of newspaper accounts you would want some one experienced in newspaper accounting, wouldn't you?

[fol. 1236] A. Yes. It is very helpful to get advice whenever you are making an analysis, of any expert in any field. The more expert help you can get; the better.

Q. I believe you told me or, rather, you told Mr. Flurry that you had the assistance of a man by the name of Mr. Coen.

A. Yes, sir.

Q. Is Mr. Coen a Government employee?

A. He has been employed on a consultant basis in connection with my work.

Q. Can you tell me when he was first employed?

A. I——

Q. Approximately.

A. I don't know the exact date.

Q. Just approximately.

A. A couple of months ago. I don't recall the exact period when he came to Washington on a consulting basis to help me in the development of this material.

Q. Was that when he was employed by the Government? When he came down to Washington to help you?

A. That is correct.

Q. He has been employed by the Government since that time?

A. He is presently on a consulting basis with us. He was just there for one week.

Mr. Kramer: I can't hear you, Mr. Houghton.

A. He was just there for a week on the consulting job.

[fol. 1237] By Mr. Wilson:

Q. Well now, had you ever met Mr. Coen before that time?

A. No, sir.

Q. Was it your recommendation that he be employed?

A. No, sir.

Q. Do you know how he happened to be employed for this job?

A. Well, I understand that he has had twenty-five years of experience in this field and he is one of the best that can be found in this field.

Q. You understand that he is a recognized expert with a high reputation in the industry?

A. I understand that he has a very great grasp of this industry.

Q. Well, I ask you: Did you understand that he had a high reputation in the industry?

A. I don't know anything about his reputation.

Q. I see. Well, had you heard of Mr. Coen before the time that he was brought down to assist you with this work?

A. Yes. I had heard about him. I heard that he was—that we might use him in connection—

Mr. Kramer: I don't hear you, Mr. Houghton.

A. That he might be used by the Government in connection with this job.

By Mr. Wilson:

Q. Do you know whether or not he had been consulted [fol. 1238] previously to that time?

A. Only by hearsay.

Q. Well, let me ask you this: Did the attorneys in the Department tell you whether or not they had consulted Mr. Coen prior to that time?

A. Yes, sir. I think so.

Q. Had they consulted him here in New Orleans?

A. I believe they had.

Q. Was he at that time on the Government pay roll?

A. That, I don't know.

Q. I believe Mr. Coen's home is in Chicago, is it not?

A. Yes, sir.

Q. Do you know if he has an office there?

A. I don't know for sure. I believe he does.

Q. Well, if I suggested to you that he didn't, you wouldn't know?

A. It wouldn't mean anything, one way or the other.

Q. I see. Do you know if Mr. Coen was employed by anyone in New Orleans at the time he was consulted here by the Government?

A. I am not sure. I have no affirmative information at all on that matter.

Q. Have you ever been told that Mr. Coen has at any time been in the employ of the Item?

A. Yes. He told me he had been.

Q. And that has been recently?

[fol. 1239] A. Yes. I think so.

Q. All right. And you had the benefit of Mr. Coen's advice and assistance in going over the books or the records of The Times-Picayune Publishing Company, which you selected through the Federal Bureau of Investigation from our records?

A. Yes, sir.

Q. Now, I believe we mentioned a couple of other men that you had consulted. One of them was a Mr. Anderson. When did you consult with Mr. Anderson?

A. I consulted with Mr. Anderson very soon after I was given this assignment, even before I received the records, and discussed with him the——

D.

Q. All I asked you is: When? Let's not answer any more than the question at a time.

Where did you meet with Mr. Anderson?

A. At the Bureau of Internal Revenue.

Q. On one occasion? On more than one occasion?

A. On several occasions.

Q. On how many occasions would you say?

A. I would say at least a half dozen or more.

Q. Mr. Anderson, I take it, is a Government employee in the Bureau of Internal Revenue?

A. Yes, sir. That is correct.

Q. Now, there was another gentleman whose name I didn't get, who worked at the Federal Trade Commission. [fol. 1240] A. Mr. Lundvall.

Mr. Kramer: Spell it, please.

A. L-u-n-d-v-a-l-l.

Q. How many conferences did you have with Mr. Lundvall?

A. Well, I may have had a half-dozen conferences with him, too.

Q. Was that while you were on loan? Or was that while you were employed?

A. Well, I think, maybe both.

Q. When would you say you first consulted Mr. Lundvall?

A. It is about the same time I did Mr. Anderson, when I first received the assignment.

Q. You have been in New Orleans at least once before the trial of this case, have you not?

A. Yes, sir.

Q. More than one time?

A. No.

Q. You were here, I believe, around the first of April, were you not? In fact, to be specific, on the 3d day of April.

A. Well, that may be right. I don't recall, exactly.

Q. You were familiar with the fact, were you not, that for a number of years the books of The Times-Picayune Publishing Company had been audited by a firm of auditors called Haskins & Sells.

A. At what time are you referring?

Q. Well, you were familiar in April, were you not? When you were here in April?

[fol. 1241] A. No. I wasn't.

Q. Oh, I misunderstood you, Mr. Houghton. I thought you said you had the advantage of the depositions when you were preparing this thing.

A. That is right. I recall that there was a mention of Haskins & Sells in there, but I didn't take very careful note of that.

Q. Don't you remember a little more than that about it? Where are those Haskins & Sells' reports that are in evidence? That envelope?

(Documents handed to Mr. Wilson.)

Q. (Continuing.) Don't you recall these being exhibits to the depositions?

(Documents handed to the witness.)

A. No, sir. I did not have these with the depositions. I just had a copy of the deposition.

Q. Oh, the Government didn't bother to show you these Haskin & Sells reports for the years '48, '49 and '50?

A. No, sir.

Q. Which they got with the depositions?

A. That is right.

Q. And your work was going to be done on the financial side of the picture? I mean: This (indicating) is what you would be primarily interested in, would you not? In the reports showing the auditing of The Times-Picayune Publishing Company?

A. The financial records?

[fol. 1242] Q. Yes. These are financial records, are they not?

A. I understand they are. I haven't examined them.

Q. Well, suppose you examine them and see what they are.

(Documents handed to the witness.)

A. Yes, sir.

Q. And that is exactly the same type of material that you used in preparing Government Exhibits 133-A, -B, -C and -D? And you used material like this in preparing those exhibits and in preparing the charts that you had submitted here at the Court, did you not?

A. That is correct.

Q. And you, of course, say that you did have the use of the deposition and you knew, of course, that it was taken on January 17, 1951?

A. Yes.

[fol. 1243] Q. Well, you had to wait until the Bureau of Investigation could obtain this material from the files of The Times-Picayune Publishing Company to do your work?

A. Yes, sir, that is correct.

Q. If I recall correctly, the Bureau had not completed that work when you were here in April, 1951, had they?

A. Oh, yes.

Q. They were still in the—Mr. Frank was still working over there, was he not?

A. I had received the records long before I came to New Orleans.

Q. All right. The records still were not available to you though, at the time that you started to work over at the Department of Justice, were they?

A. That is correct.

Q. And you started to work at the Department of Justice some time after January 17, 1951?

A. Yes, I think that is correct.

Q. And I expect one of the first things you saw was the deposition, wasn't it?

A. Yes, I think it was.

Q. But nobody bothered to let you see these financial reports, did they?

A. No, sir.

Q. And although you read the deposition and noticed [fol. 1244] that they were offered in evidence, you didn't ask for them?

A. No, sir.

Q. And when you came to New Orleans in April of 1951, you made no efforts to consult Haskins & Sells, did you?

A. No, sir.

Q. In your business, are you familiar with the reputation of Haskins & Sells as an accounting firm?

A. I have heard of them.

Q. Well, you know that they are a nation-wide accounting firm, do you not?

A. Well, I think they must be, or I wouldn't have heard of them.

Q. And do you know that not too long ago they were employed to set up a system of accounts for the United States Treasury?

A. No, I don't know that.

Q. And that they have been used to set up systems of accounts for the City of Chicago?

A. No, I didn't know that.

Q. Well, you do know that they are Certified Public Accountants, do you not?

A. That is my understanding.

Q. And it was apparent from this deposition that for many years they had audited the books of The Times-Picayune Publishing Company?

A. It may have been. I couldn't swear to that.

[fol. 1245] Q. Well, now, being of an inquiring turn of mind, wouldn't it have occurred to you that they would probably be the best people to consult as to how the books and records were kept at The Times-Picayune Publishing Company?

A. Not necessarily.

Q. That is, you don't think they would be as good as Mr. Coen to consult on that subject?

A. Well, that is a different question. I don't know.

Q. Well, can you think of someone—he is the only one that you have mentioned to me—can you think of someone that would be better to consult on that subject than Haskins & Sells?

A. Well, I don't know. I have a very high respect for the people I consulted in the Government. For example, I have extremely high respect for Mr. Lundvall of the Federal Trade Commission, and Mr. Anderson—

Q. Let's talk about Mr. Lundvall. Does Mr. Lundvall audit the books of The Times-Picayune Publishing Company?

A. No, sir, not to my knowledge.

Q. Well, do you think someone who had had no previous experience in the books or records of The Times-Picayune Publishing Company would be better able to advise you than a reputable accounting firm who had handled those books and records for years?

A. Not necessarily.

Q. Well, now, let's find out what you do mean. Don't you really mean that Haskins & Sells would have been the best source of information that you could have found as [fol. 1246] to the books and records of The Times-Picayune Publishing Company?

A. Not necessarily.

Q. All right, Mr. Houghton. I suppose that you collected quite a bibliography on this account on the subject of newspaper accounting before you went into it, didn't you?

A. That was my first undertaking, but I found that there was a grave lack of good material on the problem of allocation of costs, at least, in recent years. I had the aid of the Federal Trade Commission accountants on that matter because that was one of the first things I wanted to do. I may have overlooked something, but I certainly tried to find it.

Q. Suppose you tell me what books you did find on the subject?

A. I didn't make a search myself because Mr. Lundvall made it for me—one of his assistants made it for me. This man happens to be a teacher in accounting, and he helped me. He was unable to find anything in recent literature on this problem.

Q. By "recent literature," what do you mean?

A. Well, in the last few years. I don't know how far back he went. I found one accounting book on newspaper accounting which didn't even mention the problem of allocation of costs.

Q. Well, did you consult Mr. Coen on that subject?

A. On bibliography?

Q. On whether there were any recent books——

A. No, sir.

[fol. 1247] Q. And so, if we can, perhaps during the noon hour, if you and I can locate a good book on that subject, we could say that the man over at the Federal Trade Commission was a little lax in his search, couldn't we?

A. Could be.

Q. Well, now, you mentioned having the use of the depositions in your work. In reading those depositions, were you satisfied from them that these records that you have

used here—I am referring to the photostatic exhibits marked Government 72, 73, 74, 79 and 78—were you satisfied that those would give you an accurate picture of the operations of The Times-Picayune Publishing Company after you had read those depositions?

A. Well, I assumed that the FBI accountants used good judgment in picking up the records, and that he picked up the correct records from the books of the company.

Q. Well, you understand what these photostats are, don't you, Mr. Houghton? Let's take Government Exhibit 73; what do you understand that exhibit to be?

A. Well, it is a comparative statement of earnings and operating expenses, statement of accounts of The Times-Picayune Publishing Company.

Q. In other words, that is a photostat of the company's own records on comparative earnings and operating expenses, that is, their internal control records?

A. I think that is correct, yes, sir.

[fol. 1248] Q. That is not the Haskins & Sells report for 1949 which I showed you a minute ago?

A. No, sir.

Q. And when you have been testifying here about using the company's annual statements, what you really meant was that you were using copies of their annual internal control records, as photostated and reproduced for you by the Federal Bureau of Investigation. You were not testifying that you were using Haskins & Sells records?

A. That is correct.

Mr. Kramer: May we approach the bench?

The Court: Certainly.

(Bench conference.)

The Court: Court will be at recess for five minutes.

(Short recess.)

The Court: Proceed.

By Mr. Wilson:

Q. So that the record may be clear, Mr. Houghton, you never examined the books of The Times-Picayune Publishing Company yourself, have you?

A. None other than the books that were turned over to the FBI.

Q. That is, whatever photostats were turned over and whatever additional figures the FBI gave you, is the extent of your examination?

A. That is correct.

[fol. 1249] Q. Now, you have never been through the plant to determine how operations are carried on over there, have you?

A. No, sir.

Q. I understood you to tell Mr. Flurry that you had accepted The Times-Picayune Publishing Company's statement of revenues after you had analyzed it, is that right?

A. Well, I actually accepted them although I thought they were erroneous. I think they overstated the profits, overstated the revenues, and, therefore, the profits.

Mr. Flurry: For the entire company or for the States only?

A. For the States.

By Mr. Wilson:

Q. Well, I notice that you left out all revenue items except advertising and circulation, is that right?

A. That is correct.

Q. And I believe that in your explanation to Mr. Flurry, your reason for believing that they had overstated the revenues was that they included 35,000 Sunday circulation carrier revenue in the circulation figure, am I right?

A. That is correct.

Q. Now, what did you understand that that revenue amounted to?

A. Well, it amounted to about—I worked it out actually—

Q. How did you work it out, tell us that?

[fol. 1250] A. I multiplied the 35,000 by .11.75¢ a copy, which is the figure Mr. Adams cited along with the 35,000 figure, and multiplied the result by 52, and you come to $213,980.00.

Q. Well, now, you understood that Mr. Adams gave you that figure in his deposition on January 17, 1951, did you not?

A. Yes, sir.

Q. And you applied that against '47, '48, '49 and '50 figures, did you not?

A. Well, that is against the 1949 figures as a test.

Q. Did you take the trouble to find out whether or not the Sunday rate had been increased from 7.6 to 11.6 as of January 1, 1951?

A. Well, I was only concerned with the records prior to that period.

Q. So you used the January, 1951, figure as being the price at which the Times-Picayune Sunday edition was sold, without knowing whether that figure was applicable in 1950, 1949, 1948 or 1947?

A. It gave me a rough indication, yes, sir. I didn't know the precise date it applied to.

Q. Well, Mr. Houghton, assuming that the testimony which will be introduced in this trial will show that the Sunday price for the Times-Picayune-New Orleans States for the year '48, '49 and '50 was 7.6, you would have come up with quite a different figure, wouldn't you?

A. Well, if that was the assumption.

Q. I say, assuming that.

A. Yes, sir.

[fol. 1251] Q. And you didn't make any inquiry as to whether or not there had been a price change as of January 1, 1951?

A. No, sir. I accepted Mr. Adams' statement in the deposition.

Q. That that was the price in January?

A. Yes, sir.

Q. Well, now, you quite agree that classified advertising revenues were not adequately apportioned to the States, do you not?

A. From one point of view, they are not. Actually, in my opinion, it is not strictly fair to credit the States with the lineage which they secure additionally from what they would get in the free market by the forced combination, but in order to be conservative, I gave them the credit the way Mr. Adams suggested it should have been, namely, in circulation, even though he had used a ratio which was faulty, 80-20, whereas the actual ratio that prevails is 70-30 as

between the Times-Picayune morning and Sunday as a unit and the States as a unit.

Q. What ratio are we talking about now?

A. That is the annual circulation.

Q. And you are putting morning and Sunday on one side and the States on the other side?

A. That is correct.

Q. And so far as you are concerned, the States is not entitled to any revenue out of the Sunday classified?

A. No. My whole study is confined to the States as a unit, a six day unit.

[fol. 1252] Q. Well, if a man takes a classified ad for a six day run and he buys it on Thurdsay, it is going to run right through to the middle of the following week, isn't it?

A. Under that assumption, I would say yes.

Q. So we are entitled to thirty per cent of the revenues on Thursday, Friday and Saturday, none of it on Sunday, but thirty per cent on Monday and Tuesday, is that the way you had it figured out?

A. Well, that is according to your—that is according to Mr. Adams' arbitrary yardstick.

Q. No, we are using yours, 70-30. We are not using Mr. Adams'.

A. I accepted it only because I thought it was a tentative figure which could be used in order to arrive at some approximation of your revenues, and I thought that there was no great area of difference between us on that; that is, there were compensating errors in the books, as I felt.

Q. Well, now, when you came down to allocating expenses, you weren't willing to accept the 80-20 division, were you?

A. No, sir. I didn't accept it for the revenues either.

Q. Well, you may not have accepted it mentally, but you put it on this Exhibit 133-A, B, C and D, did you not?

A. Well, that is because there was a compensating error in the circulation revenues.

Q. Well, I think maybe—in other words, one compensates the other, and you were satisfied when you were through [fol. 1253] with that, that that was washed out?

A. I still think it was somewhat overstated, the revenues, but I was trying to be as conservative as I could in order to arrive at a reasonable figure.

Q. Well, now, as I understand the situation on classified advertising, isn't it true that the same number of inches of classified advertising run in the Times-Picayune as run in the States, excluding this infinitesimal amount called over the river, which is in the States instead of the Times-Picayune?

A. Would you please restate the question.

Q. Well, I say, according to your understanding, is it true that, excluding over the river classified advertising which I understand is an infinitesimal amount, the same number of lines of classified advertising are found in the States as are found in the Times-Picayune?

A. I don't know whether I've got the question—infinitesimal?

Q. Well, use your own adjective for that. It is a small amount, isn't it?

A. Relatively small amount.

Q. In fact, if any thing is true there is more classified advertising in the States than there is in the Times-Picayune, isn't there?

A. On a daily basis, yes, sir.

Q. On a daily basis. So you have just as many or more lines of classified advertising in the States as you have in the Times-Picayune, isn't that true?

A. Yes, sir. That is, the Times-Picayune six days a week. [fol. 1254] Of course, my whole——

Q. Well, for your purposes, we will exclude Sunday temporarily.

A. For my purposes, I include along with the morning and arrive at the States as the residual. Actually, the figure on lineage is approximately 42 per cent, that is, the States carries 42 per cent of the total.

Q. The States carries 42 per cent of the total, if we give all the Sunday lineage to the Times-Picayune?

A. That is correct.

Q. Well, now, do you think that you are qualified to say that those classified advertisers purchased that lineage because they wanted it in the Times-Picayune rather than purchased it because they wanted it in the States? I am just asking you, are you qualified to say?

A. I think I can interpret trends.

Q. Well, are you qualified to answer that question? I mean, do you feel that you are qualified to determine whether these people bought the advertising because they wanted it in the Times-Picayune or because they wanted it in the States?

A. Well, I could say this——

Q. Well, now, can't you answer my question? Are you qualified, or not, do you feel that you are qualified or not?

A. Yes, I feel that I am qualified to draw inferences from trends.

Q. To draw inferences from trends?

[fol. 1255] A. Yes, sir.

Q. And I take it that those trends appeared sometime before 1935 when the combination rate went in, is that right?

A. Yes. The lineage shot up very sharply after the introduction of the forced combination classified.

Q. That is back in 1935?

A. That is correct.

Q. When the States was under other management—I mean prior to 1935—when the States was under other management, it had a relatively low circulation at that time, did it not?

A. It wasn't so relatively low.

Q. Not so relatively low? How great was it? What was the circulation then of the States?

A. I don't remember the exact figures, but I worked out a ratio, and I think it was about 27 per cent of the total was in the States.

Q. Of course, at that time, they were competing with the Times-Picayune?

A. I am speaking of the figures at the time of the merger.

Q. Well, now, just before the time of the merger, there was the States competing with the Times-Picayune and it was competing with the Tribune-Item, which were sold at a unit rate for classified advertising, wasn't it?

A. That is correct.

Q. So you think that on the basis of what you discovered at that time, you are competent to judge how many classified [fol. 1256] advertisers buy because they want the States and how many buy because they want the Picayune?

A. Well, I think there is such a correlation in pattern

as between what happened after the introduction of forced combination on February, 1950, and that which was shown in 1935 when the forced combination was put into effect there to draw a logical inference that the consequence of introducing the forced combination is to bring the weaker paper's lineage up to the level of the stronger.

Q. Well, the consequence is to bring the one that has the lesser lineage up to the one that has the greater lineage?

A. Well, I interpret weaker as——

Q. Well, let's not use that language. Let's use my language. The question I asked you was, isn't the consequence to bring the one that has the lesser lineage up to the one that has the greater lineage?

A. Yes, sir.

Q. And that nothing else could happen, could it, if you put in a unit rate?

A. I wouldn't think so.

Q. Of course, it might be true under some circumstances; that the one with the greater lineage would come down a little, and the one with the lesser lineage would come up a little, mightn't it?

A. Yes, if they didn't have the position in the field which would make it quite important for the advertisers to continue to advertise in that medium.

Q. Well, in other words, there is always a possibility that [fol. 1257] that would happen——

The Court: Do you think that answer is correct?. Isn't it possible that the advertisers could take less in each one?

A. Yes, sir. I answered it that way and qualified it. To make myself clear, perhaps that is a way of telling which way the pull is, from the weaker to the stronger, or to pull them both down. If you pull the lesser paper up to the level and then they progress on, then I should assume or interpret the trend to mean that the stronger had pulled the weaker up and carried it along.

By Mr. Wilson:

Q. Now you say perhaps that is the way to determine it. What you mean is maybe it is and maybe it isn't?

A. Well, that is the inference I draw from the trend.

Q. Now, would you be so kind as to look at Government

Exhibit 133-B. You have listed there under Revenues, Advertising and Circulation as the only sources of revenue. I believe you said yesterday that there was an additional revenue that you had not considered?

A. Yes, sir. The end of the year adjustments were not considered because they were not included in the same records. They were kept in separate records and there was some confusion, I thought, in those accounts. But I did make a rough estimate of how they would have fit into my calculations.

Q. You prepared Government Exhibit 143 to show that?

A. Yes, sir.

Q. Do you have Government Exhibit 143 available there?

[fol. 1258] A. No, I don't have it in my set.

Q. Well, I will let you take my copy. You have on there an item called Cuts, Mats and Metals—Income from Cuts, Mats and Metals?

A. Yes, sir, Cuts and Mats Sold.

Q. Did you have a breakdown of that, Mr. Houghton, available?

A. No, I don't believe so.

Q. That is, you made no investigation as to what is included in that?

A. Well, as far as I could ascertain from the records, it wasn't broken down. There was one end of the year adjustment just carried as Cuts and Mats Sold.

Q. What you mean, don't you, is that the records which you obtained through the Bureau of Investigation were not broken down?

A. That is right. That is what I relied on entirely.

Q. You don't mean to say that the information wasn't available over there if they wanted to take it?

A. I had no idea of what might be available.

Q. And, as I understand it, they were not asked to get that sort of information, were they?

A. I can't speak as far as that is concerned. Mr. Frank would have to answer that.

Q. Well, didn't you have any part in directing what information the Bureau of Investigation should obtain?

A. No, sir, my instructions were that these were the books [fol. 1259] of the corporation, and that I could rely on them as accurate, and so I proceeded from there.

Q. Oh, you were told that these were the books of The Times-Picayune Publishing Company?

A. Yes, sir.

Q. Well, with your vast experience in examining and analyzing accounts, didn't it strike you that these were pretty skimpy books to be the books of The Times-Picayune Publishing Company, a company doing $12,000,000.00 gross business a year?

A. Well, they didn't look too good to me, but I didn't think they kept two or three sets of books.

Q. Well, you didn't even think that was one set of books, did you?

A. Well, it was fairly complete. It seemed to be on a continuous basis, month by month and year by year for a period of time.

Q. Well, didn't it occur to you that there must be a number of ledgers over there from which these mats were drawn off?

A. Obviously, there would be lots of ledgers, but the end result was what I was concerned with, drawn from the ledgers.

Q. You were not interested in what went into these various items?

A. Well, certainly, but I assumed that the ledgers were kept properly and transcribed properly to the statements, which were photostated by the FBI.

Q. Well, did you think that you could make an analysis [fol. 1260] of these accounts by simply the headings that were on Government Exhibit 73?

A. Yes, sir.

Q. Without knowing what came from the ledgers that went into them?

A. Yes, I assumed that the entries were properly made by the company.

Q. Well, but you understood, of course, that these are arbitrary books, kept for internal control, that you didn't have their audit reports from Haskins & Sells?

A. They weren't arbitrary. They were only used, as far as I could understand, in connection with the allocations, not in connection with the figures carried on the books and

records of the company. I didn't assume that they kept their books on the totals in an arbitrary fashion.

Q. Well, didn't you have some difficulty reconciling the figures you used with the total shown on these reports?

A. No. The figures worked out all right, balanced out.

Q. They worked out fine, huh? You got all the income, did you?

A. All the income for the newspaper, yes. I excluded the radio portion.

Q. You have taken it all into account and given us credit for all of this?

A. To the best of my knowledge.

[fol. 1261] Q. Of course, it wasn't until after we got into the trial of this case that we came up with this income for Cuts, Mats and Metals?

A. Well, there is always the matter of depreciation, which we wrote counsel about and he explained that shortly before he arrived in New Orleans this time, which explained how the reserve for the actual accounts were handled, and this reconciliation in Government 143 shows that depreciation amounted to approximately $180,000.00 in 1950. The biggest item on the other side was Cuts and Mats Sold of $157,000.00; so that actually if I had made an adjustment on my charts which were prepared before, I could get this matter straightened out, they would have shown a loss, at any rate, for the year 1950.

Q. That is your assumption that that——

A. Yes, to the best of my knowledge.

Q. What do you understand Cuts and Mats to mean?

A. Well, they are engravings and the mats that they make ads with and various things of that character.

Q. How do you suppose the Times-Picayune Publishing Company gets revenue from those?

A. Well, they sell mats, I suppose, to advertisers. They probably sell the cuts. I don't know just where they would sell them.

Q. That is what you understand as being that account?

A. Yes, sir.

Q. Well, now, supposing it would develop in the testimony here that the editorial department in 1949 made $2,396.55 from pictures sold to people. Where would you look for that income?

[fol. 1262] A. Well, I assumed that the books were self-sufficient. If other types of books were kept in the corporation, I had no knowledge of them. A different system of record-keeping that was not given to the FBI, is something that I did not know about.

Q. That is, you relied entirely upon whatever the FBI handed you, and the FBI relied entirely on someone other than you to tell them what to hand you?

A. I can't speak for the FBI.

Q. Well, with your experience in handling and in analyzing accounts, has it occurred to you that perhaps in some cases, the expenses of a particular department might be shrunk by the income of that department before they were entered on the books?

A. I thing that is entirely possible, yes.

Q. So you made no investigation to find out whether those revenues had been shrunk—I mean the expenses had been shrunk by the amount of income for any particular department before the books, such as Government Exhibit 73, were made up?

A. Before they were made up, you say?

Q. I say you made no effort to determine whether, in the system of internal controls used by The Times-Picayune Publishing Company, they had shrunk the expenses of a department before they entered up the expense figures in Government Exhibit 73?

A. That is correct. I assumed that the figures were correct on the profit and loss statements that I received.

Q. Well, that wouldn't make the figure incorrect, would it, [fol. 1263] the fact that they had shrunk the expenses by the income of a particular department before they entered it up on their annual books or their monthly books, that wouldn't make it incorrect, would it?

A. Well, I assumed what was entered on the books was correct.

Q. Well, you assumed it was correct, but what I am trying to find out is whether you had any information or knew anything about shrinking department expenses before entering them up in the monthly books and in the annual books as evidenced by Government Exhibit 73, and I understand you did not have any information to that effect?

The Court: As a matter of fact, they have those annual books and monthly books, do they not?

A. Yes, sir. They carry the monthly records right through to the end of the year.

The Court: Do you know whether they keep their accounts on ledgers?

A. Well, they may have ledgers, but this is a profit and loss record we are discussing.

[fol. 1264] Q. Now, I don't think the record is clear on that yet, Mr. Houghton.

Isn't it true that you had no information as to whether expenses of any particular department or item shown as an expense item on Government Exhibit 133-B had been shrunk by the income, from the income from that department prior to the time that it was entered up on the Company books?

A. That is correct. I used the figures exactly as they appeared on these statements.

Q. Well now, let's take the item, newsprint or paper, whichever way you list it there.

The Court: When you say "item," you mean—

Mr. Wilson: In other words, the subject.

The Court: Little "i".

When he says 'item,' he is not talking about the Item newspaper; he is talking about the item on the account.

By Mr. Wilson:

Q. Mr. Houghton, if it develops in the testimony in this trial that for the year 1949 the Company received revenue from waste paper and claims as against newsprint purchases in the sum of $48,313.37, and, if it further develops that that item of revenue was shrunk entirely on the Company's books against the Times-Picayune, morning and Sunday, then your figures are off by that amount, aren't they?

A. Yes. If the records weren't correct that I received, then——

Q. Mr. Houghton, there is no question about the records [fol. 1265] being correct or not.

We have agreed that it would be perfectly proper to shrink these expense items, if we want to shrink them.

You understand, these are books of internal control; and, I am saying if that is the way they were set up, then the conclusions you have drawn are incorrect.

A. Well, the figures that are on the books are the ones I followed. There is hardly any question about how they are handled, because, if you shrink them before you put them on those records, then that has been taken into account.

If you didn't, then that is something I wasn't aware of.

Q. Supposing that I am correct that the testimony will show that roughly $50,000 of income from waste paper sales and claims was shrunk against the expenses of the Times-Picayune, morning and Sunday editions, and none of it was shrunk against the States' expenses, the figures you have got there and the conclusions you have drawn from them are incorrect, aren't they?

A. If that is a fact.

Q. If the evidence shows that, then that is a fact, isn't it?

A. Except that there are some offsets that we might consider and the fact that your revenues are overstated by approximately that same amount in the carrier, according to my estimate.

Q. Well now, wait a minute. We have used that carrier revenue up once, Mr. Houghton. We used that on classified advertising.

How many times are we going to use it?

[fol. 1266] A. There was a little more, I think.

Q. You have got a little to spare, aye.

A. I think so.

Q. Well, let's see what we can do about that.

The Court: Then, it would come to this: If you charged the States with its proportionate share of the paper used, any salvage or sales of waste paper should be credited against the States in the same proportion? It should be divided between the two papers in the same proportion?

A. I assumed the records they gave me were correct.

The Court: These records you have don't show that, do they?

A. I had a net figure, whatever that was. It was called "newsprint paper expense". If there should have been qualification on it, it wasn't carried in the books.

Q. Well, Mr. Houghton, you understand, do you not, that these books were prepared for the use of The Times-Picayune Publishing Company, as a matter of internal control and were not prepared for your benefit or the benefit of the Government in attempting to draw any conclusions as to how the allocations should be made.

You understand that, don't you.

A. I understand they are the books that were turned over to the FBI.

Q. That is right. We were asked to give them, were we not, the books which we had prepared from year to year and not to prepare them a separate set of books.

[fol. 1267] A. That is correct. Your correct books were assumed to be turned over.

Q. All right. Well now, when you examined these records, did you find out that The Times-Picayune Publishing Company had a rather substantial income from investments?

A. Well, that is an income which is not directly related to the operation of the newspaper, in my opinion.

Q. Oh, and so no income directly related to the operation of the newspaper should be credited to either paper? Is that right?

A. No.

Q. Is that your conclusion?

A. That was the way the records are kept.

Q. Just a moment. The income is there; and, as I understood you, you didn't use it, because it was not directly related to the operation of the newspaper.

A. I think the income is not carried in that profit and loss statement that way.

Q. You mean, you can't find——

A. Nor in the revenues, the way they appear on those records.

Q. You can't find any income in any of those profit and loss statements for income from investments?

A. I don't recall that they are there. I carried the revenues that were there.

Q. How did you miss cuts, mats and metals before? How [fol. 1268] did you miss it?

A. That was an end-of-the year adjustment. It wasn't carried.

Q. How about income from investments? Wouldn't that be an end-of-the-year adjustment?

A. Yes. I think it would, logically.

Q. Well, you have had access to that Haskins & Sells report that we were talking about a moment ago, have you not? I am referring, specifically, to Government Exhibit 8.

You have had access to this (indicating), have you not?

A. Well, I knew they were available. I didn't use them. I used the FBI records.

Q. You mean, you never looked at this until you got to Court?

A. That is correct.

Q. That is the first time you have ever seen it?

A. That is correct.

Q. Well, I suppose that, as you made up these various exhibits you have offered here, you checked from time to time with the Government counsel, didn't you?

A. Why, of course; but I assumed that the records——

Q. Now, let's not have your assumptions about assuming the records are correct. Let's answer my question.

A. Yes.

Q. You did.

All right. And you showed them what you were including in the revenues?

[fol. 1269] A. Yes, sir.

Q. And, having read the deposition, you knew that they had these Haskins & Sells' reports, did you not?

A. I didn't know that they had the reports, necessarily.

Q. You saw on the deposition that they were exhibits to the record, if you read the deposition, didn't you?

A. I didn't notice that, in particular.

Q. You mean you just read it and paid no attention to it?

A. I assumed the records which were turned over to me were correct.

Q. No one is arguing with you, Mr. Houghton, about whether the records are correct or not. What I am trying to find out is how much effort you made to make a true determination on this.

I want you to look at Government Exhibit 8 and tell the Court whether or not you can find income from investments on that?

A. This happens to be a balance sheet. This isn't a profit and loss statement.

Q. Well, turn over. Just turn over a page or two and see if that will help you any. See if you can find it on page B of that.

A. Yes. There are some entries here, including profit on sale securities, which is a capital gain. I don't see why that would be entered in an account like this.

Q. I am not asking you to criticize the report, Mr. Houghton. I am asking you whether you find income from investments there.

A. That is in the other income credits I am reading.

[fol. 1270] Q. We will get to it.

Is there income from investments there?

A. There is no entry which says "income from investments" here.

Q. Do you find any figure to show income in the form of dividends?

A. Yes.

Q. All right. How much is that?

A. Well, $35,000.

Q. All right. Do you find any figure that would indicate income from interest received?

A. Yes, sir.

Q. And how much is that?

A. $33,000.

Q. Now, if I understand what you have testified to here previously, the reason that you did not include these amounts was because you did not regard them as being directly related to the operation of a newspaper?

A. That is correct.

Q. May I see 143. I believe I gave you my copy.

(Document handed to Mr. Wilson.)

Q. (Continuing.) When you came to finding some deductions to set up against these additions to income, you put in depreciation on the plant.

Now, do you regard that as being something that is [fol. 1271] directly attributable to the newspaper?

A. Yes, sir.

Q. And you are satisfied on that.

Now, you have a figure in here, "other debits".

Do you know what that includes?

A. No. I don't.

Q. But you are satisfied, whatever it is, it is directly chargeable to the newspaper?

A. I have never seen an entry called "other debits" before, like that. I was rather surprised to find it in the records of the Company.

Q. Now, when you made your breakdown, if I may see——

When you were handling fixed charges as an item of expense, you included in the fixed charges the franchise taxes of the corporation, did you not?

A. Yes. They were included on the books and I carried them forward.

Q. So, that is something that you regard as directly chargeable to the operation of the newspaper?

A. I followed the books, as they were set up.

Q. Well, you didn't follow the books on income from investments, did you?

A. I carried the income from the newspaper operations down, only. That is correct.

Q. Well, you didn't carry the income from cuts, mats and metals into your exhibits, did you?

[fol. 1272] A. No, sir.

Q. But those are directly attributable, are they not?

A. Yes, sir. That was an end-of-the-year adjustment which I took into account after I talked with Mr. Frank to try to figure out how that should relate to the books; so, I made the adjustment after I made my study to see whether that would affect materially the reallocation. The effect that I found was that it would have increased the loss in 1950.

The Court: You mean the cuts, mats and metals?

A. The offset, you see. They had depreciation, which wasn't included in the books, even under fixed charges.

The Court: You mean the net results?

A. The net results, yes, sir.

By Mr. Wilson:

Q. I note on the Haskins & Sells' report which I showed you and you looked at the Other Income Credits, Miscellaneous.

Do you know what goes into that?

A. No. I don't know what would go into Miscellaneous.

Q. What did you do with it?

A. In the Haskins & Sells' report? I didn't use the Haskins & Sells' report.

Q. And nobody called to your attention the fact that there was income shown on this Haskins & Sells report which is Government Exhibit 8 and which the Government has had since the 17th of January that was not shown on the material that you had?

A. No, sir.

[fol. 1273] Q. Do you have before you Government Exhibit 133-B?

Mr. Houghton, if I understood your testimony correctly, you used three different formulae for reallocating the expenses of The Times-Picayune Publishing Company, did you not?

A. That is correct.

Q. And those three were Man Hours, Published Pages and Circulation?

A. That is correct.

Q. And where you have made such entries as Editorial Space, Advertising Space, those were merely checks that you were using against your other methods? You didn't use them, as such? You merely used them as checks against your other methods? Is that right?

A. Within the framework of the three basic reallocations, that is correct.

Q. Well now, I note that the three different formulae which you used seem to have produced somewhat different results.

Which formulae or which formula do you advocate? Or are you saying that any one of the three is an acceptable formula for allocating the expenses of The Times-Picayune Publishing Company between editions?

A. Well, I think all three are useful in preparing an

estimate; and, if they come within, show a similar result, why then, one is a check on the other.

That is my theory.

Q. So, so far as you are concerned, if we take Man Hours, [fol. 1274] that is just as good as Published Pages?

A. Well, they are all three estimates to give us a general reallocation and estimate of what the reallocation should be. Whether one is better than the other would depend somewhat on the various departments. In some departments, I think one of the ratios is more applicable than in the others. Sometimes, I think two out of the three are more applicable than the third; but, at any rate, I used all three, consistently, in order to have a counter-check at every point, so that, if any one of the figures might be out of line, it would serve as a check against the others.

Q. So, we could just use either one, so far as you are concerned? We can take any one of them?

A. No. I think that you would have to look at the totality of this estimate and judge whether it is sound as a basis for allocations. You have three levels at which to examine them.

Q. And you are satisfied that, because the three formulae you selected work out in varying ratios somewhat different from the formula adopted by The Times-Picayune Publishing Company, yours are better than theirs?

A. It is not because of the result that I think they are better. It is because of the standards I used.

Q. Oh, I see. It is because of the reasoning that you put into it?

A. That is correct, in my opinion.

Q. And, as I understand it, you have never worked on a [fol. 1275] newspaper and you have never been in a newspaper business to study the operations of it.

A. Oh, yes. I have been in newspapers to study the operations.

Q. You have studied the operations?

A. Not minutely, but I have been through plants and observed the operations.

The Court: Let me ask you this question: You say that any one of these standards is acceptable; but, with respect

to certain departments, you think that certain combinations of these standards would be preferable?

Is that correct?

A. I think you can go down and point to particular departments; for example, the composing room. I think the Published Pages is probably the best of the three estimates.

The Court: Well now, you don't know what the results would be if you took these combinations. You don't know what the results would be if you took the combinations of three standards which you consider most desirable with respect to certain departments, do you?

A. Yes. It would still show a loss.

The Court: Don't these various standards that you have applied vary within several percentage points?

A. Yes, sir.

The Court: Among themselves?

A. Yes, sir.

[fol. 1276] The Court: And they vary with the method applied by the allocation made by The Times-Picayune Publishing Company?

A. Yes, sir.

The Court: And that variation is not much greater than the variation between the various standards that you have applied, is it?

A. No. There isn't very much difference.

The essential variation falls into the four departments that they had failed to allocate. The others are check balances to indicate that the allocations were not bad, in my opinion.

The Court: Now, let me ask you: In point of time, when did you prepare this schedule which shows that, under the standards which you applied, the States would have a loss?

A. See. The time is sort of collapsed. I have been working so much on this, I can't recall the exact time, but it has been at least, I think, a month ago, or more.

I went to Kansas City on April 15th to confer with Mr. Flurry on the whole material, and I had it down in preliminary form sometime before that.

[fol. 1277] The Court: Well, at the time that you made these calculations, before you made them, were you told what the Government's theory of this case was?

A. Yes, sir.

The Court: One of the various theories of the Government's case?

A. Yes, sir.

The Court: One of the theories was that the States was actually losing money and that the Times-Picayune was carrying it?

A. That is correct.

Mr. Kramer: There is no doubt about that.

The Court: Is it proper to say you set out to establish the theory, or to justify the theory?

A. No, sir.

The Court: The complaint was filed in June, 1950. Your calculations were made long after that.

A. Yes, sir.

The Court: Proceed.

By Mr. Wilson:

Q. Well, Mr. Houghton, if the Company had adopted any one of the three methods that you set up in this Exhibit 133-B as a method of setting up their own books of internal control, would you have accepted that as being enough, without having to go any farther and making up this exhibit?

A. Well, as I tried to say, I think from department to [fol. 1278] department it varies. One standard may be better than another. But I used them as a check. Now, as to whether the Company should use these allocations themselves, is another matter. It is whether they would prefer to use them. In my opinion it was—My test was to see how, in my opinion, on the basis of my analysis and calculations the States was varying, profitwise, in relation to the Times-Picayune Company's allocations.

(Brief recess.)

Q. Let me ask you this, Mr. Houghton: Assume that the Times-Picayune Publishing Company had taken your three formulae: Man Hours, Published Pages, and Circulation, and had exercised their judgment as to which formula was

the best for each particular department, would you have been satisfied with that?

A. I would have to see what it was first.

Q. In other words, you would be willing to set up your judgment against the judgment of men who have been operating that newspaper since before you were born and have been allocating expenses amounting to some ten million dollars, you would set your judgment up against their's on it?

A. Yes, sir.

Q. Would you turn over to the last page of Government Exhibit 132-A? Now do those footnotes that appear at the bottom of the page, some twelve of them—how many of those indicate places where you have varied from the formula which is stated at the heading of your Columns on Government's Exhibit 133-B?

[fol. 1279] A. Would you please repeat the question?

Q. What I would like to know is, how many of these twelve footnotes on this supporting data—perhaps I should have used—instead of using Government Exhibit 132-A, use the last page of Government Exhibit 132-B, which has eleven footnotes on it. That way we can compare that one with 133-B.

Now, there are eleven footnotes there, and what I want to know is how many of those are designed to indicate places where you have not used, for the allocation of a particular type of expense, the formula which would be indicated at the top of the columns on 133-B?

A. Well, the first footnote would not because that indicates the source, where it was compiled. The second footnote does, and the third does.

Q. Which figures does the second footnote affect?

A. That refers to the 17.8, carried against the Press Room under Circulation.

Q. All right. How about the third?

A. That is a divergence from the aggregate Published Pages ratio, also.

Q. And so if we look back at 133-B and look under the heading which is called Published Pages, that heading would not accurately reflect what you have done on that particular item, would it?

A. The heading has been explained as a label which re-

fers to the general principle followed in reallocating expenses under that heading. I tried to explain, as clearly as I know how, that there were variations as you move down, [fol. 1280] department by department.

Q. Let's try footnote 4 and see what we get there.

A. Well, that is not a variation from the Man Hours Standard. It is just to indicate the specific man hour figure ratio that was used for that department.

Q. Well, it indicates, does it not, that you did not use the same method under that department as you had used in certain other departments?

A. Well, that is because there were no figures.

Q. I don't know whether it is, because I want to know whether it is true or not.

A. Repeat your question, please.

Q. I say, that indicates that you did not use the same standard in certain departments as you used in other departments?

A. No.

Q. You did not use the same source material?

A. No, it doesn't indicate that at all.

Q. Let's take the maintenance department.

The Court: Let's see what it does indicate. I understand it does.

A. He says I use different source material. That is not the case. I used the same source material for this particular ratio that I used for the rest of the column.

By Mr. Wilson:

Q. And the source material, I take it, were the Company payrolls?

[fol. 1281] A. That is correct.

Q. So you used the Company payroll in the Maintenance Department for your allocation in the Maintenance Department?

A. I used the Company payroll consistently in the Man Hour department.

Q. I say, you used the Company payroll in the Maintenance Department to indicate the Maintenance man hours?

A. What was your question?

Q. Did you use the Company payroll in the Maintenance Department to allocate Maintenance hours?

A. I used the ratio based on the payroll.

Q. Not on the payroll in the Maintenance Department?

A. There was no allocation in the Maintenance Department.

Q. No, that isn't quite what you mean. What you mean is that it was all allocated to the Times-Picayune morning and Sunday in the Maintenance Department.

A. That is correct.

Q. And you weren't willing to accept the Company's judgment on that, were you?

A. That is correct.

Q. So you took what you called Mechanical Payrolls and struck an average off of those and then proceeded to redistribute what the Company had distributed in some other way?

A. Yes, sir.

Q. And so for those departments, footnote 4 indicates that you haven't used a consistent method all the way through, doesn't it?

[fol. 1282] A. No.

Q. All right. Let's find out how we distributed the expenses in the Press Room. How did you distribute in the Press Room, for 1949, for the Man Hours? How did you make up your Man Hour Distribution for expenses in the Press Room for 1949?

A. There was an allocation of the payrolls as between the Times-Picayune, morning and Sunday—payroll accounts, that is—and the States, evening. The ratio was computed, based on those allocations and that was applied.

Q. What was the ratio?

A. 16.9.

Q. All right. Now tell us how you made up your allocation in the Maintenance Department of expenses; and when you used the Man Hour basis?

A. I struck an average between the four mechanical departments; namely, Composing Room, Press Room, Stereotype Room, Photoengraving and Mail Room, based on the records and allocations that were made by the Company, or according to the Company's books.

Q. And you see no difference between the method used under Man Hours for the Maintenance Department from the method used for the Press Room?

A. Well, there is a difference in the sense that I have computed an average from other departments in order to fill in a gap where there was no allocation made by the Company, if that is what you mean by a difference; yes. [fol. 1283] But the general standard of applying man hours all along the line is what I had reference to when I answered the question. That is the way I understood the question to be posed.

Q. In one case you applied Man Hours as shown by payrolls and in the other case you applied Man Hours as distributed according to some formula that you developed. Isn't that right?

A. Yes.

Q. All right. And so, a court, reading Exhibit 133-B, and reading the heading up there; would not be able to tell that your methods were different from department to department, would he?

A. I think he would.

Q. Well now, supposing you explain how, if we have only 133-B before us, we are going to find that out?

A. Well, in the case of the Press Room here, you have—no, let's see. Well, you have a 16.9 figure, which, as I explained in my testimony, came from Government Exhibit 130.

Q. All right.

A. Now, in your Maintenance Department, the 27.2 figure came from Government Exhibit 130 also, marked, "Suggested Allocation Based on Distributed Mechanical Man Hours." I think there is a typographical error there. It should be 27.2 in the footnote.

Q. What note are you looking at?

A. Footnote 4.

Q. You are using "G-132" to read "133-B", aren't you? I mean, you are using 132-B to read 133-B?

[fol. 1284] A. I didn't know you had reference to 133-B.

Q. I am asking you about these headings.

A. Each of these tables are interdependent. If you don't follow the flow of the tables each table can't be sufficient in itself. You have to refer back to the other.

Q. Do you have any footnotes on 133-B that would enable the Court to trace those back through these previous exhibits?

A. Well, I didn't carry the footnotes in every case here because the summary totals are carried forward from the departments, from the more detailed table. I didn't think it was necessary to label every department total here in order for the Court to follow it, because the specifics are indicated within the detail table: these specific variations from the standard.

I wouldn't expect anyone reading this intelligently to expect to examine the whole work without referring to its component parts.

Q. Well, then, the 132 is a component part of 133. Is that it?

A. Yes, sir.

Q. Is there anything on 133-B that would indicate that 132-B is a component part of 133-B?

A. No, but that is explained in my testimony: the relationship between the tables.

Q. Well now, would you turn over to 133-A. Look at the Circulation Department there. Do you see "Circulation Department" under "Expense?"

A. Yes, sir.

[fol. 1285] Q. In the first column under Man Hours, how is that allocated? What formula is applied?

A. If you refer back to the detail table in 1950,——

The Court: First column, or second?

Mr. Wilson: The second column: column 2.

A. Well, we will refer back to the detail table and we will note that the Circulation ratio is applied for the Published Pages there instead of the Published Pages ratio, and the identity is shown between the Circulation estimate and the Published Pages estimate.

Q. How can you tell that the Circulation ratio was applied instead of the Published Pages ratio?

A. Well, it is shown in the detail table. At least, it is intended to be shown. All of them are explained in my testimony as to how they are inter-related. For example, in the detail table for 1950, footnote 9 shows "Based on Circulation." It shows how the table is substituted for Published Pages.

Q. Don't you think we ought to have a footnote on 133-A to show that?

A. Yes, I think there should be one. I think in the 1949 table there was. It was an oversight on my part that I did not put that footnote there.

Q. And it only appears in the 1949 table; it doesn't appear in the '50, the 1948 or '47 tables, does it?

A. The 1949 is the model table. If there are variations they should be considered in relation to '49.

[fol. 1286] Q. Can we say if the 1949 table is wrong they are all wrong?

A. I don't know.

Q. Well, it is the model table.

A. It is the model in terms of form.

Q. Well, now we are talking about this Man Hour allocation. Was any attempt made to determine the actual disposition of Man Hours of the employees of the Times-Picayune Publishing Company: where they actually worked and what they were working on?

A. The payroll accounts were taken from the books. The day shift was assigned to the States, the night shift to the Times-Picayune. That was a system, as explained by Mr. Tims in his deposition. We followed—the F.T.D. followed that procedure. So, as a check against any possible inter-shift variation, that is, whether one staff would work for the other paper part time, or vice versa, my intention was to have a countercheck against that possibility with these other ratios. For example, there are many things like make-ups, that can't be actually taken into account, in these Man Hour figures. The re-makes and re-sets may be greater on the States than on the Times-Picayune. On the other hand, there may be some pages that are made for the morning by the afternoon crew. But my purpose here was to have, for example, a Published Pages ratio which should be a check against that possibility. Actually, I found that the Published Pages ratio was substantially higher than most of the Man Hour ratios which indicated to me that the Man Hour Distributions weren't too bad.

Q. After those few well-chosen words, Mr. Houghton, I take it your answer to my question is "No?"

A. Would you repeat the question?

(The Reporter read the last question.)

[fol. 1287] A. I don't think that is the type of question that you can answer with a straight "yes" or "no," because the method——

The Court: I think it is.

You know whether you made any effort or not.

A. I made no effort to go beyond what the FBI had collected, I will say that; but, if you are talking about my system of allocations——

The Court: That isn't the question.

A. All right.

By Mr. Wilson:

Q. And, so far as you know, Mr. Houghton, no one else made an attempt to determine the actual employment time as distributed between editions for the employees of The Times-Picayune Publishing Company; did they?

A. Do you mean by that——

Q. The actual timing? I mean by that the actual time that a man was working on the morning edition, a man was working on the evening edition, a man was working on the Sunday edition?

A. No.

The Court: If a man spent half his time working for the Picayune and half for the States and they charged all of his time to the States, you wouldn't know anything about that? You accepted their pay roll records?

A. Yes, sir. That is right.

By Mr. Wilson:

Q. Were those pay roll records adequate for you to [fol. 1288] determine as to which paper the salary of, say, the editor of the Times-Picayune, Mr. Nicholson, was charged?

A. His salary would go into Officers, the Officers' Department, and I think all the officers are charged to the Times-Picayune by the Company.

Q. But, by you, was allocated——

A. By me, was allocated——

Mr. Kramer: Can you keep your voice up, please, Mr. Houghton, a little bit?

By Mr. Wilson:

Q. Were you able to ascertain from the records furnished you by the FBI to which pay roll the salary of the editor of the States was allocated?

A. The pay roll accounts are in total, so that I followed the totals, as gathered by the FBI. Whatever the FBI secured on pay roll accounts is what I used.

Q. You don't know whether the salary of the editor of the States, Mr. Fitzpatrick, was charged to the States or charged to the Times-Picayune, do you?

A. Only in so far as it may be reflected on the records which the FBI picked up.

Q. Now, that is the question I am asking you: Were those records sufficient to reveal to you where Mr. Fitzpatrick's salary was allocated?

A. No. I think they are in departmental totals.

[fol. 1289] Q. So then, the answer is that you don't know whether it was allocated to the Times-Picayune or the States?

A. No, not specifically. I am not specific on that.

Q. Well then, so far as the records you had before you, Mr. Houghton, they could have allocated Mr. Fitzpatrick's salary to the States and Mr. Healy—You know who Mr. Healy is, don't you. The managing editor of the Times-Picayune. You saw him here on the stand.

A. I wasn't here in the court room that day.

Q. You know he is the managing editor, do you not?

A. I assume he is, if you say so. I don't know.

Q. We could have allocated both of those salaries to the States and we could have allocated two office boys to the Times-Picayune; and, so far as the study you made on Man Hours, Mr. Healy and Mr. Fitzpatrick would have carried the same weight as the two office boys, if they worked the same hours, wouldn't they?

A. If that is the way the records are kept, that is the way I used them.

Q. I am not saying the way the records are kept. I am trying to find out how much validity there is to your Man Hours' allocation.

Mr. Houghton, in your examination of our books, you

decided that we had adopted an erroneous theory in allocating our various expenses, did you not?

A. I don't know whether you adopted a theory or not.

Q. Well, maybe we were erroneous in allocating expenses. You determined that, didn't you?

[fol. 1290] A. Yes, sir, in my opinion.

Q. Did it occur to you that we might be equally erroneous in allocating our personnel?

A. Yes. That occurred to me.

Q. Well, why didn't you attempt to reallocate our personnel for us, too?

A. Because I used another standard to check the validity of the Man-Hour distributions.

Q. Well now, what did you do? You prepared the Man-Hour distributions and then took another standard and attempted to check it by that other standard?

A. As a matter of fact, the first standard I developed was not the Man Hours. That was one of the last standards I developed.

Q. I see. And, as I understand your testimony, on these other standards, you used those right down the line, except in those places where those eleven or twelve footnotes indicated to you it would be advisable to use something else, didn't you?

A. I don't think the footnotes indicated that.

Q. You decided to use something else and then wrote in the footnotes?

A. That is correct.

Q. Mr. Houghton, you were willing to accept for your purposes on Man Hours the pay rolls as allocated by the Company or whether they were day pay rolls or night pay rolls and the fact that the Company didn't charge the day pay roll one way and the night pay roll another way, and [fol. 1291] you were willing to accept for your purposes the Company's allocations of revenues.

Why wouldn't you accept our allocations for expenses?

A. Because you hadn't made any allocations in four major departments that amounted to anything. That was the principal division; and, all along the line, I made checks to see what, in my opinion, were good standards to follow and computed the allocations on that basis and checked those against the allocations of the Company.

Q. You made a determination on the Maintenance Department that the expenses should be distributed on the basis of mechanical pay rolls when you applied the Man-Hour test, did you not?

A. Yes, sir.

Q. I note that you included in the mechanical pay rolls the mail room pay roll?

A. Yes, sir.

Q. On what possible theory could you include the mail room as one of the mechanical pay rolls, Mr. Houghton?

Have you seen anything in any of the literature that has ever been written on this subject anything to consider mail room as a mechanical pay roll?

A. I didn't consult the literature on the question of the mail room.

Q. Well, did you consult someone else on it?

A. Yes, sir.

Q. Mr. Coen?

[fol. 1292] A. Yes, sir.

Q. And he said the mail room was mechanical pay roll?

A. He said it was often considered as one of the mechanical departments.

Q. I assume that, in the course of your studies, you have come across this document called "Twenty-Eighth Annual Daily Newspaper Cost and Revenue Study," covering the year 1947, put out by the Inland Daily Press Association, Inc., 7 South Dearborn Street, Chicago, Illinois?

A. No, sir.

Q. So, you don't know anything about this publication, at all, in the industry?

A. No, sir.

Q. And, consequently, you had no knowledge that in their cost studies they say: "All mechanical expense includes only composing, press and stereotype expense"?

A. No.

Q. Well now, when we were talking about maintenance expense the other day, I understood you to say or to tell the Court that, in your opinion, the maintenance expense would be greater in the press room than in the editorial room.

Is that right?

A. Yes.

Q. Why do you say that?

A. Well, it seemed to me that it would be. For example, the detailed breakdown indicates that, of all the mainte-[fol. 1293] nance expenses carried under the Maintenance Department by the Company, the largest single item is $77,841 and that is for electricians, carpenters and machinists. I am sure that they wouldn't be operating for the Editorial Department.

And the porter, I should think, would be cleaning up the press room, which is a much dirtier operation than the Editorial Department.

The electrical repairs is another substantial item, and I wouldn't think that would be associated so much with the Editorial Department as with the Mechanical Department.

Those are the largest items shown in that breakdown.

Q. Well, you think that we don't need carpenters up in the Editorial Department?

A. I imagine you need a few, but not as much as in the Mechanical Department.

Q. What would you do with a carpenter down in the press room?

A. I can't say as to the specific thing I would have a carpenter do in the press room.

Q. Well, don't you know, as a fact, that, actually, when it comes to repairs of the presses, etc., that that is done by the press room crew and the supplies are charged to press room supplies, rather than to maintenance supplies?

A. I assume the press room supplies are charged to press room supplies, press room. In fact, there is an entry in this under the press room for supplies.

Q. Going back to this Man Hour business in the press room.

[fol. 1294] As I understand it, you have never been in the press room of The Times-Picayune Publishing Company?

A. That is correct.

Q. Well now, I would like for you to assume that on Friday afternoon that day crew, which is charged to the States, will be running, and I am speaking of tomorrow afternoon, three sections of the Sunday paper.

Now, assuming that is true, what do you think we ought to do about it?

A. Keep them working.

Q. Now, what do you think we ought to do about your figures, if we keep them working?

The Court: How do you think you should charge the time? Is that what you want to know?

Mr. Wilson: I want to know how he thinks we should——

The Court: How do you think they should charge their time? I would like to know.

A. To the morning and Sunday, as a unit.

By Mr. Wilson:

Q. But they are on the day pay roll; so, they are not reflected that way in your figures, are they?

A. If that is the case.

The Court: Suppose they worked a while for the States and then they ran on the Sunday edition and threw them back on the late edition of the States, what should they do then?

[fol. 1295] A. Well, if they want to keep time cards for every hour of their time and shift it back and forth, they can do that and get a very precise figure.

The Court: It would be very, very expensive and inconvenient, wouldn't it?

A. Yes, sir.

By Mr. Wilson:

Q. Well now, I note that you have there—Let's look at your Man-Hour allocation on advertising expenses.

Did you actually use pay rolls to make that Man-Hour allocation?

A. These are from the records that the FBI got and I assume they are pay rolls.

Q. Well now, the same classified ad appears in the Times-Picayune and appears in the States, does it not?

A. I assume so.

Q. If it appears in the Times-Picayune, it is going to appear in the States, is it not?

A. I assume so; yes.

Q. That is the way you understood our rate structure, isn't it?

A. That is right.

Q. Well now, if we are going to keep our classified advertising and we are going to have to discontinue the operations of the States, how many less are we going to have on our pay roll?

A. You are going to discontinue the operation of the States?

[fol. 1296] Q. Yes.

A. Entirely, you mean?

Q. Assume we discontinue the operation of the States and still continue to publish classified advertising in the Times-Picayune, how much are we going to be able to reduce our pay roll?

A. I think that would be quite a hazardous guess to make.

Q. Do you think it takes more people to get an ad that runs in the morning edition and the evening edition than it does to get an ad that is going to run only in the morning edition?

A. No. I think, if I understood your question correctly——

Q. I think you understood it and I am sure you gave the right answer.

Q. Now, the classified pay rolls reflect advertising that is not necessarily sold at a unit rate?. Isn't that true?

A. Some of the over-the-river, I presume.

Q. There is a little over-the-river.

A. Yes.

Q. So, there is one person, there, that we have to charge off to the States; so we could get rid of that one, couldn't we?

A. Yes, sir.

Q. Because we wouldn't have any over-the-river, but we need the rest to get it to run once, just as much as we need to get it to run twice.

Now, we come to display. Display is not sold at the unit rate. It is only sold at the optional unit rate and at separate rates, is it not?

[fol. 1297] A. Yes, sir.

Q. So, we have two pay rolls there: a States and a Picayune pay roll.

On the people that sell at the optional unit rate, that is, on all advertising sold at the optional unit rate, it doesn't take any more people to sell it to run once than it does to sell it to run twice on the optional, does it?

A. No, sir. I wouldn't think so.

Q. Now, what you did: You took the display advertising pay roll and the classified advertising pay roll, struck an average, and applied that to the general advertising pay roll, didn't you?

A. That is correct.

Q. Well now, you have heard quite a bit of mention of Jann & Kelly in this case.

Do you think we could get rid of Jann & Kelly? Or could we get rid of Jann? Or get rid of Kelly, if we got rid of the States?

A. I wouldn't know.

Q. Well, do you think that Jann & Kelly could get along with fewer people selling advertising to run once in the Times-Picayune than to run once in the Times-Picayune and once in the States? The same ad is going to run twice?

A. That is possible.

Q. Well now, what is possible?

A. That they could have fewer people on their pay roll, if they sold only in forced combinations as separate from [fol. 1298] selling each paper, separately.

Q. Well, supposing, for the purpose of my question, we assume that the States is going to be discontinued and put out of business.

Now, do you think that having only to sell for the Times-Picayune they could reduce their staff and would have to pay them less to sell advertising for only the Times-Picayune than where they are selling at a unit rate to be run in the Times-Picayune and the States?

A. Read that question.

(The Reporter read the last question.)

A. No. I don't think they would necessarily have to reduce their staff. If they sell in the unit rate, it is the same, whether it goes into both papers or one.

Q. And that would be true of our entire general advertising pay roll and expense, would it not?

A. Yes, sir.

Q. So, although you have allocated it, the advertising expense under classified and display to the States in the Times-Picayune, you are not trying to tell this Court that

if we discontinued the operation of the States we could reduce that expense any, are you?

A. No. I think it is just the same.

Q. The expense would be the same.

Mr. Houghton, since you have been in New Orleans, have you been reading the Times-Picayune-New Orleans States?

A. Yes, sir.

Q. Have you read the Sunday paper?

[fol. 1299] A. No.

Q. You haven't read the Times-Picayune-New Orleans States on Sunday?

A. No.

Q. You don't know, then, that Mr. Fitzpatrick has a column in the Times-Picayune-New Orleans States on Sunday?

A. No.

Q. Well, Mr. Houghton, let's assume that Mr. Fitzpatrick, the editor of the States, has his salary on the Company books charged entirely to the New Orleans States and that on Sunday he runs a column in the Times-Picayune-New Orleans States and that two days ago or three, he received the Pulitzer Prize and that he will have a column in the Times-Picayune-New Orleans States on each Sunday *from* the rest of this month.

Do you think he contributes anything to the Sunday Times-Picayune-New Orleans States?

A. How do you mean, "contributes"?

Q. Does he contribute anything to the value of that newspaper?

A. I presume he does.

Q. Well, do you think, under those circumstances, that there would be some justification in charging some part of Mr. Fitzpatrick's salary to the Sunday paper?

A. Yes, sir.

Q. Now, as I understand what you did on office and general expense: You took the distributed Man Hours, did you not, and distributed the office and general expense?

[fol. 1300] A. Yes.

Q. Well now, just which Man Hours are those? Are those the distributed Man Hours for the entire all other

operations? Or are they just the distributed Man Hours for mechanical departments? Or what are they?

A. It is based on all of the departments where there had been an allocation made by the Company or the Company's records. I can cite them, if you would prefer.

Q. Well, if you would just give me the names of the departments that you used.

A. Composing room, press room, stereotype room, photo-engraving, mail room, display advertising, classified advertising, editorial and circulation.

Q. And what did you do? Strike an average?

A. Yes, sir.

Q. And an average of the percentages in each one?

A. No, sir.

Q. What kind of an average did you strike?

A. You add each column of the Times-Picayune, morning and Sunday, man hours for each of those departments, together, as a total, and then the States, as a proportion of the total, and the Company total, Times-Picayune and States, as a total, and you compute the ratio of the States to the latter figure.

Q. Well, you made no effort to weight those averages, did you, in any way?

A. No, sir. That is a straight arithmetic average.

[fol. 1301] Q. And it doesn't take into account the number of people or the type of work being done or the wages being received, does it?

A. It takes into account the number of people, because that is implicit in the ratio, in the Man Hour figure.

Q. Well, if there are two people in, say, the maintenance department and we determine that the ratio is fifty per cent for that department, and we turn to the press room, and we find that there are three hundred people, and we determine that the ratio is fifty per cent, why, then we simply use fifty per cent for each one, don't we?

A. No, sir.

Q. Well, now, that is what I want to get straight. I want to find out how you weighted that. We are going to take the press room; we are going to say there are three hundred people in it, one hundred fifty working on the morning paper and one hundred fifty working on the

evening paper. We are going to take the maintenance department and say there are two people, one working on the morning paper and one working on the evening paper.

Now, I want to know how much weight the press room carries in determining the average that you are going to use for allocating administrative expenses, and how much weight the maintenance department carries.

A. Well, it is strictly in terms of the number of Man Hours worked in each department, you see. My method is simply adding the total Man Hours together. You don't take the average of percentages or you would get a very distorted picture.

[fol. 1302] Q. You take the total Man Hours of all departments and add them all together?

A. Where there was an allocation.

Q. All where there was an allocation?

A. Correct.

Q. And then you take the percentages of the totals?

A. That is correct.

Q. All right, now we are straight. Well, now, I note that included in the office and general expenses are such items as officers' salaries, in office and general—I have forgotten, I think you have them in separate categories. I am speaking of them together.

A. Yes, the officers' salaries are in the general expenses.

Q. Well, Mr. Houghton, let us assume that Mr. Nicholson, the President of the Company, and Mr. Tims, the General Manager, between the two of them, received compensation slightly in excess of a $100,000.00 a year. Now, do you think that we ought to allocate, for The Times-Picayune Publishing Company, we ought to allocate those salaries between the States and the Times-Picayune morning?

A. Certainly, for this purpose.

The Court: The total?

A. You divide the total between the papers, yes, sir.

The Court: What about the time they spend on investments, the income for which you don't give them any credit?

A. Well, I don't think that would affect your allocations, unless one of them worked on investments much more than [fol. 1303] the other, and it is a question of the ratio of

their combined efforts on the Times-Picayune morning and Sunday as against the States. Actually, in this case, they didn't charge anything to the States.

Q. But you did, didn't you?

A. Certainly.

Q. Because you think that some of it ought to be allocated to the States and some to the Times-Picayune?

A. I think they work for the States as well as for the Times-Picayune.

Q. Has it occurred to you that they might be working for The Times-Picayune Publishing Company?

A. Yes, sir.

Q. Well, now, since we ought to allocate those salaries according to your theory, suppose that we discontinue publication of the States and let's take a $100,000.00 and the 70-30 ratio, there is $30,000.00 that I suppose we ought to get rid of, the expense, shouldn't we, if we are going to discontinue the States, on your theory?

A. Yes.

Q. Well, now, how are we going to fire Mr. Tims or Mr. Nicholson?

A. That is up to you.

Q. In other words, it is perfectly all right as long as we fire one of them?

A. Yes, sir.

Q. Well, now, we understand that we have got to fire one [fol. 1304] of them, and that, I suppose, is because we are taking a step which, in your opinion, will improve the revenue position of The Times-Picayune Publishing Company, because we are getting rid of this losing venture called the New Orleans States, is that it?

A. Not necessarily.

Q. Well, they have certainly done something that improved the revenue position, according to your theory.

Mr. Kramer: I didn't hear your question because someone called me.

Mr. Wilson: Which one, the one that has been answered?

Mr. Kramer: The one that is pending.

Mr. Wilson: Well, I haven't finished it yet. I will start over.

By Mr. Wilson:

Q. We have certainly done something that improves the revenue position of the company according to your theory, have we not, when we get rid of the New Orleans States? We are going to get rid of all this big loss you are showing us, aren't we?

A. This loss is premised on the basis of the set-up that you have now. As to translating it into some different situation is another question.

Q. Well, I mean you are trying to tell me, as I understand you, that we are running the New Orleans States at a loss. Isn't that what you are drawing charts here to show?

A. And making it up from the profits of the Times-Picayune.

[fol. 1305] Q. Yes, that is what your charts are designed to show?

A. That is what they show.

Q. Well, you designed them to show that, didn't you?

A. Yes, sir.

Q. All right. So I take it that assuming that we discontinue the printing of the New Orleans States, why, we are going to change the picture, are we not, and increase our profit position for the Times-Picayune Publishing Company as a whole?

A. I think that is a very theoritical question.

Q. Why, it is not as theoritical as the position you are putting to me, Mr. Houghton. You are trying to tell me that the States is being operated at a loss. What I want to know is if we get rid of the States, are we going to increase the profits of the company as a whole?

A. Is that a question?

Q. That is a question.

A. I don't know.

The Court: Is the reason that you don't know because you don't know whether they are losing money on the States or not?

A. No, sir.

By Mr. Wilson:

Q. Well, if it is true, Mr. Houghton, that The Times-Picayune Publishing Company is operating the States at a

loss, wouldn't it be true that they would increase their profits on the Picayune by getting rid of the States?

A. Not necessarily.

[fol. 1306] The Court: Would the Times-Picayune Publishing Company make more money?

A. Not necessarily.

The Court: If a store had a losing department, and discontinued the losing department, the store itself wouldn't make more money?

A. Not necessarily.

The Court: They would have more of what they did make left, wouldn't they?

A. Not necessarily.

The Court: All right. Proceed.

A. I can cite one example that I have heard mentioned, that some department store did away with a particular department that they calculated was not making money, and they found that because it had drawn so much trade in, even though it was a losing item, that they lost more money by discontinuing it. There are a lot of alternatives that can be brought out in any analysis. My analysis is restricted to the situation today. I don't know what would happen if they changed. They might make more money if they have a smaller operation, or vice versa, there is no way of judging, but this study is not confined to that problem.

The Court: If you wanted to show that the States was making a profit in this instance, in getting up these charts, how would you go about it?

A. I don't think I would go about such a procedure. I didn't set out to do such a thing.

[fol. 1307] The Court: I don't say that you set out here to show a loss, but suppose you wanted to show a profit when you set out to make up these figures, couldn't you have done it?

A. No, sir, not in my opinion.

The Court: Is it correct to say, that given enough pencils and paper, good pencils and good paper, a good statistician could prove almost anything? Is that correct or incorrect?

A. I wouldn't know.

The Court: You are a good statistician, aren't you?

A. I wouldn't say I could prove just anything.

The Court: I said almost anything.

A. I wouldn't say that even.

The Court: All right. I was wondering if this is a good place to stop.

(Off the record discussion.)

The Court: Court will recess until tomorrow morning at 10:00 o'clock.

(Whereupon, at 1:30 o'clock, p. m., Thursday, May 10, 1951, a recess was taken until Friday, May 11, 1951, at 10:00 o'clock a. m.)

[fol. 1308] PROCEEDINGS OF MAY 11, 1951

(The trial was resumed pursuant to adjournment, on Friday, May 11, 1951, at 10:00 o'clock, a. m.)

HARRISON F. HOUGHTON, resumed the stand and testified further as follows:

Cross examination.

By Mr. Wilson:

Q. Mr. Houghton, will you refer to Government Exhibit 133-B. I note that your second method of allocation there is Published Pages. Do you consider that any adequate check upon the allocation of expenses for a newspaper?

A. In certain of the departments I feel that it is a good check.

Q. Well, let's take this example: (Strike that.)

Let's make it clear, first, what we are talking about when we speak of Published Pages. You mean the number of pages in the newspaper for an edition. In other words, if this paper has sixty pages in it, that is sixty Published Pages, as you count it?

A. That is right.

Q. And to determine the number of Published Pages for the year you would take the Published Pages for each day and multiply it by the times the paper is published for the year. Is that correct?

A. Yes.

Q. Well now, let's assume that we are printing two editions, and one edition is a thirty-page edition and the other edition is a sixty-page edition; and the thirty-page edition has a circulation of a hundred thousand and the [fol. 1309] sixty-page edition has a circulation of 150,000. On that basis you would have 300,000 printed pages, all together, would you not, for your thirty-page edition, and you would have 900,000 printed pages for your sixty-published-pages edition.

A. Yes.

Q. So, on the basis of published pages, you would have a ratio of two to one, which is the number of pages you would have to set if you were setting the type; and for the Circulation you would have the ratio of one and one-half to one, which is the number of pages—I mean, the number of pages that would have to be distributed around by the carriers and sold by the vendors, and so forth. Isn't that right? That is, your circulation ratio would be one and a half to one, on the basis of a hundred thousand and 150,000 circulation.

A. If I understand you correctly, your example referred to the total aggregate pages for the year?

Q. I am trying to get all these ratios.

A. That are circulated.

Q. Your circulation ratio becomes one and a half to one, and the number of pages printed, which have to go through your presses, is three to one. Isn't that right?

A. It is very difficult for me to follow all these ratios. I could refer to my own ratios, which have been computed.

Q. This is just an easy example. I will give you a piece of paper and you can make your notes. I am taking an example that doesn't have a lot of odd numbers in it. [fol. 1310] We've got a thirty-page edition and a sixty-page edition and we are going to make our circulation a hundred thousand and 150,000; and our total printed pages, then, would come out three hundred thousand and nine hundred thousand, would it not?

A. Yes.

Now, what about the number of days published?

Q. We are going to assume it is the same all the way through. We are just adjusting our ratios. I am setting

it up just simply to get the ratios, so that you will have on Published Pages a ratio of two to one.

Isn't that right?

A. Yes.

Q. And on Circulation you will have a ratio of one and a half to one, will you not?

A. If I get your Circulation right, you had one-hundred thousand for the thirty-page paper.

Q. That is right.

A. And two to one reversed?

Q. No. I had one hundred thousand for the thirty-page paper and 150,000.

A. Pardon me. I didn't get your figure right.

Q. 150,000 for the sixty-page paper. That gives you one and a half to one ratio, does it not?

A. Yes, sir.

Q. Then you take the total number of printed pages, and you come up with a three-to-one ratio, do you not?

[fol. 1311] A. Yes. That is correct.

Q. All right. Well now, the ratio of Published Pages of two to one might have some bearing upon the work done in the Composing Room, might it not?

A. Yes, sir.

Q. Because there they are setting up the type that goes on to the published page?

A. Yes, sir.

Q. In the Circulation Department, it would be completely off, wouldn't it, because the number of pages you have got to distribute is one and a half to one, isn't it?

A. Under this assumption, yes; that is right.

Q. And in the Press Room it would be completely off, again, wouldn't it, because there your presses still have to run on a ratio of three to one?

A. Yes, if you applied just the one standard throughout.

Q. Yes. If you applied that standard right down the line.

A. Yes.

Q. Well now, Column 3 on Exhibit 133-B, that is what you did, didn't you? Was to apply one standard right down the line?

A. No. That isn't correct. I made exceptions where I didn't feel it was applicable.

Q. Well now, how many exceptions did you make?

The Court: Which exhibit are you looking at?

Mr. Wilson: 133-B, Your Honor, and Column 3 of 133-B.

[fol. 1312] A. If you will look at 132-B, I think it is, which is the detailed table——

By Mr. Wilson:

Q. All right. Now, you look at 132-B and tell us on 133-B how you treated the Composing Room.

A. The Composing Room: we used the Published Pages ratio.

Q. Tell us how you treated the Circulation Department.

A. There, I used the circulation ratio for the Published Pages.

Q. Tell us how you treated the Press Room.

A. The Press Room: I left the Published Pages ratio in.

Q. That would be pretty far off, off probably more in the Circulation Department because the example I gave you is pretty near to the circulation figures of the two papers. Isn't that right?

A. Yes. Well, the reason why that ratio was used there, rather than to use the other two ratios, which are fairly lower, was because I wasn't sure. I didn't have the information as to how they print the papers. I wasn't sure whether they print two complete papers, say, or four complete papers at the same time as between the States and the Times-Picayune.

[fol. 1313] Q. You mean you don't know how our press room operates down there?

A. Not specifically, no. But if you would operate, say, four up on one paper and two up on the other, then this ratio would have a litle closer relationship to the division of activities.

Q. Well, how many presses do we have down in that press room, Mr. Houghton?

A. Well, I don't know the actual number, but no matter what the number would be, you might run them differently, depending on the character of the edition, whether you

wanted to rush the paper to the streets, for example, and use two up, four up, or whether you have a slower time schedule so that you wouldn't have to hit the street so fast.

My theory was that——

Q. Do I understand that you are saying that you don't know whether we publish the Times-Picayune and the States at the same time down in the press room? Is that what you are saying?

A. No. It is the one against the other, you see. I mean, for example, you may want to rush the afternoon paper to the streets faster, run it through the press room faster than the morning in order to meet news deadlines and that sort of thing. So, if you ran your presses with twice the crews that you did on the morning paper, then, proportionately, you should compensate for that factor.

Q. Well, if we were doing that, that would probably throw those Man Hour ratios completely off, wouldn't it?

A. The Man Hour ratios would tend to reflect that better, [fol. 1314] I should think. As a matter of fact, I feel that the appearance of these ratios, one in relation to the other, suggests that the Man Hour ratio is not far off. It is closer to the actual circulation times pages ratio which you suggest as the other criterion. There is a very close relationship between circulation as a ratio and published pages as a ratio, but the circulation times pages ratio is lower. For example, it is in the neighborhood of 17.8 whereas your published pages is 31.6 and your circulation, 29.9. Therefore, the actual newsprint that goes through the plant is lower in proportion for the States.

Q. Well, don't you think maybe a better way to treat the press rooms would have been to take the ratio of newsprint for the one paper—for the morning edition—and the newsprint for the evening edition, and take that 17.6 ratio?

A. I did in the circulation computation. I actually used that circulation ratio.

Q. So we might as well throw that out of this published pages ratio, hadn't we?

A. Well, as I say, I put it in as just a check factor here to see whether there was any possibility of this two up, four up propostion I suggested.

Q. Well, was what you were checking to see if you could get something that had a big enough error in it that it would check with another big error?

A. No, sir.

Q. Well, now, we are agreed that that isn't a very good [fol. 1315] ratio, published pages, to use for the press room, and we didn't use it at all in connection with circulation. Whey should we use published pages on maintenance?

A. Well, there again, that is a check ratio against circulation and Man Hours, and also editorial space and advertising space. I used five check ratios in the maintenance department and the reason I used five was because the Company's books had not allocated—had practically allocated nothing to the States, and I felt that in all fairness the States should bear its proportional share of the maintenance expenses.

Q. Well, you could have thought up half a dozen more ratios if you had wanted to think them up, couldn't you, that you could have used for check ratios, and gotten all kind of figures. Wouldn't that have been possible?

A. Well, I don't know. I think I got every ratio I could devise. I don't know of any others.

Q. Well, why don't we use the ratio of the ink?

A. Well, the ink is more closely related to the newsprint again——

Q. Well, that would be a good check ratio then. That would be 13.8 for the States, wouldn't it?

A. Yes. It is not a very good ratio, I don't believe. I don't think the amount of ink used has much relationship to the maintenance department.

Q. Well, I wonder if the number of published pages has much relation to the maintenan-e department, do you think it does?

[fol. 1316] A. Well, the published pages reflect the general division of activities between the respective papers; and in that respect, there must be maintained in some proportion in those divisions of activities.

Q. Well, how about editorial space, that was one of your check ratios. Do you think the editorial space in any way reflects the maintenance?

A. Yes, there is maintenance involved with the editorial operations.

Q. Well, do you think advertising space would be a good way to reflect it?

A. I think it is another good check ratio. I prefer to use all of them so that you can check one against the other.

Q. Let's take, for example, P. M., when it was being published. I am sure you are familiar with that newspaper for its short existence, are you not?

A. Yes, sir.

Q. Do you think the advertising space in P. M. would have been a good ratio on which to break it up, the maintenance for that paper?

A. Well, as I understand it, they didn't have advertising.

Q. That is my understanding too, but you are satisfied that that is a good check ratio, the editorial space and the advertising space?

A. Yes, sir.

Q. Well, now, we didn't use the published pages for two departments. Why should we use it on office and general?

A. Well, the office and general are related to the general [fol. 1317] activities of the Company, and it seems to me that since published pages reflect the distribution of activities between the papers, that it was a fair ratio to use in distributing those expenses which had not been distributed adequately, in my opinion.

Q. Well, do you think Mr. Tims and Mr. Nicholson had to work any harder when the States only printed twenty pages, any harder than they do when it prints thirty pages, or vice versa?

A. Well, I should think they may work harder when it publishes thirty pages than when it publishes twenty, if they are watching the pages carefully, looking at the newspapers.

Q. You mean it takes them longer to read it?

A. Not necessarily, but in proportion, it would. But it is a matter of the concern of handling the bigger paper. I think there should be a relationship between the size of the paper and the work you have to put in on it.

Q. Well, you don't think Mr. Tims has the same job on

that paper that you had on the Des Moines Register, do you?

A. No, sir.

Q. Well, now, would published pages be any proper ratio to break up the fixed charges?

A. Yes, sir, I think so, in my opinion.

Q. Well, you think the fixed charges would be any different if the ratio with published pages was four to one than if it was two to one?

A. Of course.

Q. You mean the fixed charges would be different for the [fol. 1318] Publishing Company? They would have the same fixed charges, wouldn't they?

A. Oh, yes.

Q. It wouldn't make a bit of difference in the amount of fixed charges whether the ratio was four to one or two to one, would it?

A. Not for the whole Company, no, sir.

Q. So, it is immaterial what ratio you apply to them. It could be—the ratio of published pages could be ten to one and you would still have the same total amount of fixed charges?

A. That is correct.

Q. And I am suggesting to you, Mr. Houghton, that the ratio of published pages could be a hundred to zero and you would still have the same amount of fixed charges, wouldn't you?

A. For the Company as a whole, yes.

Q. So, if we got rid of the States, we wouldn't reduce our fixed charges one bit, would we?

A. Well, I don't know. That doesn't necessarily follow.

Q. Why? If I understand you correctly, if the ratio of published pages is a hundred to zero, the total amount of fixed charges will still be the same. We agreed on that.

A. Well, you are putting in another set of factors there.

Q. No, that is the question I asked you and the question you answered. You meant that, didn't you, that if it was a hundred to zero, the total amount of fixed charges would still be the same?

A. But that is assuming that they continued to operate

[fol. 1319] the States, and didn't produce it for a year or something of that sort, which is an unreasonable assumption, of course.

Q. Very, I would think. You mean—let me see if I follow you correctly. If we retained, I suppose, the good will but didn't print any newspaper, why we would still have the same amount of fixed charges, but if we could some day divorce ourselves from the good will, why then we might be able to reduce our fixed charges, is that your theory?

A. No, sir. The whole theory is based on the assumption that you operate the two papers and that you are trying to distribute costs as between the two.

Q. How do you operate the two papers if you have a ratio of a hundred published pages to zero?

A. You don't.

Q. And when you have a ratio of a hundred to zero, you still haven't reduced the amount of your fixed charges?

A. You don't have a ratio of a hundred to zero if you continue to operate two papers.

Q. Well, let's assume that we don't continue to operate two papers, and we do have a ratio of a hundred to zero. When you reduce the total amount of your fixed charges——

A. Well, you might sell some of your presses if you didn't have the States——

Q. Well, wait a minute now. Let's consider that now. How many presses do we have, Mr. Houghton?

[fol. 1320] A. I don't know the exact number.

Q. Well, you think we've got more than we need?

A. That I wouldn't be able to judge without making a study.

Q. I assume you are competent to make that study, are you not?

A. Well, I would want expert assistance in order to do it.

Q. You mean your conferee from the Iran, Mr. Coen?

A. I think he would be some help.

Q. Well, now, let's talk about the circulation ratio, and bear in mind this same example that we were using before. That is your third basis of allocation, the circulation, is it not?

A. Yes, sir.

Q. Well, now, did you apply circulation to the composing room?

A. Yes, sir.

Q. Now, if we can go back to my example of thirty published pages and sixty published pages with one hundred thousand circulation and one hundred fifty thousand circulation, we are going to find that the composing room had to do twice as much work on a sixty page paper as it did on the thirty page paper, aren't we?

A. If that were your assumption, yes; if that would be the ratio of two to one, correct.

Q. But if we have a circulation of one hundred thousand and one hundred fifty thousand, the ratio that we are going to apply when we apply circulation is only one and a half to one, isn't it?

[fol. 1321] A. That is correct.

Q. What is the published pages ratio that you use here?

A. 31.6.

Q. How much?

A. 31.6.

Q. Well, now, we come down to the press room. Did you apply the circulation ratio in the press room?

A. No, sir.

Q. What ratio did you apply in the press room?

A. The circulation times pages ratio.

Q. So that would be, on my example, would be your total printed pages ratio?

A. Times the number of copies, yes.

Q. In the circulation department, I assume you applied circulation, did you not?

A. That is correct.

Q. Well, now, we get to maintenance. Did you apply circulation to maintenance?

A. Yes, sir.

Q. On what theory did you apply circulation to maintenance?

The Court: The circulation times pages?

A. No, sir. The circulation ratio.

Q. I say, on what theory did you apply the circulation ratio to maintenance?

A. On the theory that the division of activities between

[fol. 1322] the two papers was closely related to the circulation ratio, and that that, therefore, would be a reasonable basis for distributing the maintenance department costs.

Q. Well, it doesn't reflect the activities in the press room, does it?

A. Not correctly, no, sir.

Q. So it wasn't useful as a basis for distributing expenses in the press room, the circulation ratio?

A. No, sir.

Q. Well, can you say that the circulation ratio bears more relationship to maintenance than it does to the press room?

A. Yes, I think it does, because the maintenance department serves the whole organization. It is not just confined to the press room activities.

Q. Well, you think published pages would be just as good a method for distributing maintenance, don't you?

A. I think it is another good check ratio, yes, sir.

Q. Well, now, on the example I gave you, one time you would have—on circulation you would have a ratio of one and a half to one but on published pages, you would have a ratio of two to one, is that right.

A. In your example, yes, sir.

[fol. 1323] Q. Well now, tell me what you did in the Editorial Department. Did you use Circulation in the Editorial Department?

A. Yes, sir.

Q. Well now, what relation does Circulation have to the number of reporters and the number of editorial writers or the number of typewriters that it is going to take to operate the Editorial Department?

A. Well, I think there is a rough relationship between the number of copies sold and the amount of work that goes into selling those copies or producing those copies in the editorial phases.

Q. Don't you think it is awfully rough?

A. No, I don't think it is awfully rough; I think it is fairly close.

Q. Do you mean to tell me that you could take and compare the New Orleans Item with the New York Daily News and, on circulation basis, you would come up with the num-

ber of reporters that you would need to operate one, the number of reporters you would need to operate the other, and the amount of expense you would have to put into your editorial room?

A. Well, I think, there we get two very divergent papers. There might be some differences. I guess the New York Daily News has more advertising than the Item. I mean, in proportion to the total pages published.

Q. I have no doubt that it does; but does the advertising have anything to do with the editorial expense?

A. It is not directly related to the editorial.

Q. Now, does the circulation have anything to do with the editorial expense?

[fol. 1324] A. I think it does. It is a check ratio here, but I didn't rely on that alone. I relied on the Published Pages portion of the News.

Q. The check ratio is only for one reason, and that is because the peculiar circumstances have to be such that you could work it out and find that it approximated some other figure you had, isn't it?

Going back to my——.

The Court: Let him answer.

A. Actually, the Circulation ratio is much lower than the Published Pages ratio, based on the columns of reading matter; so, if there was any source of error, it was in the favor of charging less expenses to the States.

By Mr. Wilson:

Q. It is quite all right. What I am interested in is the validity of your method; not the results you got.

A. Yes, sir.

Q. Let's go back now to my example of the comparison between the Item and the New York Daily News.

Would Circulation be any basis whatever?

There is the New York Daily News with a circulation of over two million, and the Item with a circulation of about one hundred thousand.

Would circulation have any use to us whatever in determining the relative editorial expense of the two papers?

A. Of course, they are not within the same organization.

They are two distinct papers in unrelated areas, and I don't [fol. 1325] think that your cost factors would be the same.

One is in one city a long ways from the other one and I don't think that is the type of comparison I would want to make. I don't think that would be an accurate system. I think you have to have similar set-ups and be within an organization. That is the whole purpose of this analysis: to distribute the costs within one publishing company.

Q. But Mr. Houghton, when you get right down to it, the allocations that you have made there are made on the assumption, are they not, that you are operating two separate papers, separately? In other words, you are trying to find out what it would cost the New York Daily News to operate the States and what it would cost The Times-Picayune Publishing Company to operate the Times-Picayune, aren't you? I mean, you are trying to break the two, set them aside.

Assume that they are not in the same building. Assume that each one has separate costs. Assume that you are not using idle presses at a time when the press time would be wasted. You want to charge costs to those presses, don't you? Isn't that what you want?

A. How many questions?

Q. All right. We will take the last one. You want to charge costs to a press that would otherwise be setting over there, idle? Isn't that what you want to do?

A. No, sir. I wanted to allocate the costs as between the two papers, based on the amount of activity that is used in the preparation of each.

Q. Well, you want to charge to each one of them part of [fol. 1326] the use of the building, don't you?

A. Certainly.

Q. And you want to assume that—In other words, you are assuming that you can divide the building up?

A. No, sir. I am assuming that the building is used for both papers.

Q. But you are going to charge part of the expense to each paper, are you not?

A. That is correct.

Q. And you are going to assume, therefore, that we could get rid of part of the building, if we got rid of part of the paper, and get rid of part of the expense, aren't you?

A. No. That doesn't have any relationship to my allocations here. I didn't make any assumptions beyond what is going on today in the activity of the Company.

Q. Well, I assume that you knew that we have been in that building over there since 1920, didn't you?

A. I didn't make any assumptions along that line.

Q. I am afraid I made an assumption. I assumed that you knew something.

Did you know that we had been over there in that building since 1920?

A. No, sir.

Q. Well did you know that The Times-Picayune Publishing Company was publishing a newspaper at 601 North [fol. 1327] Street, when it bought the States?

A. No, sir.

Q. Well, tell me now: Does your Circulation ratio have any relation to the work in the Composing Room?

A. I think there, again, it is a good check ratio against the Composing Room. I think that Published Pages is a little closer. The ratios are so similiar; however, there is very little choice between them.

Q. That is what makes it a good check ratio, is that you happen to get a figure that came out near enough that you could say, "Well, this checks with that," isn't it?

A. Not necessarily. They have a relationship of activities in the paper. There may be some reasons why the number of copies may have the closer relationship at some point and time to the Composing Room activities than the Published Pages. At least there is that check there, if that were the case.

Q. Well now, do you think we could get a pretty good comparison, then, of the relative expense in the Composing Room of the Item and the New York Daily News, if we counted the number of or if we took the Circulation ratio?

A. I haven't made a study of that, and that is entirely unrelated to this type of analysis. It is two papers in separate localities, and it is not part of the same organization.

Q. Now, tell me, Mr. Houghton, what difference does this business make about being part of the same organization? Explain that to me. Why is that important? It doesn't

make any difference who owns the New York Daily News [fol. 1328] and who owns the Item and who owns the Times-Picayune?

A. No, it doesn't make any difference.

Q. Then, why are we talking about this question of being part of the same organization? What is the significance of that?

A. Well it is important to analyze the costs of production of various products in any organization, if you want to keep track of your costs.

In order to do that, it is necessary to assign all of the costs in some sound method to the various products you are producing. It is necessary to know how much you are making or losing on those products. If you want to price your products, sir, in relation to costs it is important to know your costs. If you are attempting to run your organization properly, it seems to me you should know what it costs to produce your products and how to price them in relation to costs of production.

Q. Let's make another try at it, Mr. Houghton. What difference does it make whether the New York Daily News and the Item are part of the same organziation or are part of different organizations? You keep telling me that that is a factor that you have to take into consideration and that, consequently, you can't compare the two.

Now, what I want to know is, why do you keep saying they are not part of the same organization?

A. Because they are not part of the same organization.

Q. Well, but no one has said they were, and you say that makes some difference. When I ask you to compare one [fol. 1329] with the other, you say: "I can't compare them. They are not part of the same organization."

I want to know why that is significant. What is the significance of your remark?

A. The significance of my remark is that there is no attempt here to study the relationship of the New York Daily News and the Item; I mean, study the relationship of the costs to the States as against costs to the Times-Picayune, morning and Sunday.

Q. All right. Now, you are doing it as an expert and I am asking you to compare the Item and the New York

Daily News, and you say they are not part of the same organization.

Now, I want to know why that is significant. Why can't I use that as a good example to get your expert judgment?

A. Would you repeat the question?

(The Reporter read the last question.)

A. There was an "if" in the beginning. Could you explain that?

By Mr. Wilson:

Q. I will try to rephrase the question for you again, Mr. Houghton.

What I want to know is: Why is it that when I asked you to compare the Item and the New York Daily News, you say that that can't be done, because they are not part of the same organization.

The question I am asking you is, Why do you say that they are not part of the same organization? What is the significance of that factor?

A. The point is that there is no attempt here to study the relationship between two unrelated papers and two unre- [fol. 1330] lated areas. The topic under study is the breakdown of costs between two parts of one organization. It is a legitimate system to follow in order to, in my opinion, determine how much it costs to produce one as compared with the other.

Q. And you did that as an expert, did you not?

A. Yes, sir.

Q. All right. Now, I am asking you to work as an expert for me and what I want you to do is to consider the Composing Room of the Item and consider the Composing Room of the New York Daily News and tell me whether the Circulation ratios of the two papers would be a good basis to determine the relative expense as between the two.

A. I am afraid I am not in position to answer that question without making a study of it.

Q. Well now, what factors do you want to know? Maybe I can supply them for you.

What is it you need to know? I want you to get the same kind of information that you had about the Times-

Picayune and the States. I want to be sure that you have comparable information, so when you ask me something you ask me for a fact that you knew already about the Times-Picayune and the States.

A. I don't think I can state just in an offhand manner just what factors I would want to consider. I think I would need to spend some time making a study of it.

Q. Well, you can tell me what factors you considered in dividing up the Composing Room of the Times-Picayune and the States, can't you?

A. Yes, sir.

[fol. 1331] Q. All right. I will supply you with the same factors, hypothetically, for the New York Daily News and for the Item:

Now, what was the first factor you considered?

The Court: What is this getting to? This line of questioning? I don't see any relationship between the Item and the New York Daily News, myself.

Mr. Wilson: My point is that the New York Daily News has a circulation of about two and a half million. The Item has a circulation of one hundred thousand. The relation is twenty-five to one. My point is that with that kind of a ratio, using Circulation to determine the relative expenses in the Composing Room, is absurd.

The Court: We don't know anything about the expenses of the two newspapers. The New York Daily News: if we find that the expenses of the Composing Room of the New York Daily News are twenty-five times greater than the Item, I don't see what we are going to get to in this line of questioning.

Mr. Wilson: Well, He has told me already that the Composing Room expenses, sir, are closely related to the number of Published Pages; that is, how many pages they set, and I am inclined to agree with him, that that is a basis.

My point is that the Published Pages may be two to one where circulation may be twenty-five to one; and when he uses Circulation as a check to check some other ratio, well, it is only an "happenstance" if it turns out to be any check, because once you have set a thirty-page paper, you have set a thirty-published page paper, and you may run off ten [fol. 1332] thousand copies or you may run off one hundred

thousand copies. The Composing Room is through when the type is set, and Circulation just doesn't mean anything. He has used a ratio that is meaningless.

The Court: Well, develop that.

By Mr. Wilson:

Q. All right. Mr. Houghton, assume that the States' crew for today sets a 32-page paper. Once that 32-page paper is set, the Composing Room is through, isn't it?

A. Yes, sir.

Q. They have set 32 pages of type. That is the type set up. Then, the Composing Room is all through with it.

A. As long as there are no remakes or resets or corrections, and that sort of thing.

Q. No. They might have to correct a page, or they might have to put in another column of type, or something; but, otherwise, they are through?

A. Yes, sir.

Q. And it doesn't make one bit of difference whether they run off one thousand copies, or run off 20,000 copies, does it?

A. Well, it could make a difference. The more circulation they have the more possibility of an attempt to satisfy that circulation with corrections and careful work on the newspaper, so that they may be going back and resetting the paper from time to time, or making resets; that is, from edition to edition. They may be more careful; so, I think there would be some relationship.

[fol. 1333] Q. Well now, you have told me yesterday that you read the Times-Picayune and the States while you were here in New Orleans. Do you think we are three times as careful on the Times-Picayune as we are on the States?

A. No. I wouldn't say three times.

Q. Well, the truth of the matter is that any corrections that you are going to make in your type are of a very minor matter, aren't they?

A. No. I don't think so. They are a cost item to have a reset and have to cut into the middle of a page and reset it after it has gone through the works. You have to make up a new mat.

Q. And so you think that the more circulation we have, the more times we might correct our newspaper?

A. I think that is altogether possible.

Q. Well, it is altogether possible that we might not, isn't it?

A. Yes, sir.

Q. And it might also be possible that we are just as careful for a thousand readers as we are for ten thousand readers, mightn't it? I mean, we may just be that kind of people.

A. Yes; you could be.

Q. Well, just assume that we are, Mr. Houghton. Assume that we are and then answer my question.

Once the Composing Room has done their job of setting your 32 pages of type and have made whatever corrections have to be made, because we are careful, they are through and it doesn't make any difference whether we run one thousand copies or twenty thousand copies, does it?

[fol. 1334] A. That is right, under those assumptions that you don't go back and make the corrections; that you are one hundred per cent accurate in the first instance.

Q. Well now, your answer with regard to the composing room is also true for the Stereotype Room, isn't it?

A. Yes. There is a relationship in my opinion.

Q. Well, but once the Stereotype Room—or, do you know what they do down in the Stereotype Room?

A. Yes. They pour hot metal into mats and set them into the form and make the circular metal plates that are put on the presses.

Q. All right. Now, once that is done, it doesn't make any difference whether they run one thousand copies or twenty thousand copies, assuming that we have been just as careful as we assumed we were in connection with the Composing Room?

A. Yes, except that you may make twice as many for one edition as another, depending on whether you are running the presses twice as fast or manning them twice as fast, or you are running four up against two. The number of stereotype plates has some relation to the press room activity.

Q. Does it have any relationship to the speed at which you run a press?

A. No.

Q. What you mean is that we would have to be running twice as many presses, wouldn't we?

A. If you used twice as many presses and you used [fol. 1335] twice as many stereotype plates.

Q. Do you think it would be possible for us to operate twice as many presses on the Times-Picayune as we operate regularly on the Times-Picayune?

A. Well, I don't know how many you run regularly, so that is difficult to answer.

Q. The truth of the matter is: you don't know how many we have, do you?

A. No, sir.

Q. Well now, how about Photo-engraving? Does Circulation have any relation to Photo-engraving Department?

A. Well, is has more of an indirect relationship, I should say, than the Composing Room relationship.

Q. In other words, it is less related to Circulation than either the Composing Room or the Stereotype Room, isn't it?

A. I think so.

Q. Did you use Circulation for your advertising expense?

A. No. I used it only for the Circulation estimate. I used the advertising lineage ratios.

Q. And, of course, you didn't use Circulation for either paper or ink did you?

A. No, sir.

Q. So now, we seem to be in fairly substantial agreement that Circulation isn't a good basis for Editorial, Composing, Stereotype, Photo-engraving Departments, and we didn't use it at all for the Advertising or the Paper [fol. 1336] or the Ink.

We come down to the fact that it really is only useful in the Circulation Department, and to some extent in the Press Room. Isn't that right? I mean, that is the only place that it is much good for checking anything, isn't it?

A. No. It is also good for the Composing Room, particularly, and I used it for the Stereotype Room and the

Mail Room. I used it in a number of rooms. I think it is a good check in all of those rooms.

Q. Well, despite the deficiencies that we have discovered in it, you still think it is a good figure to use in the Composing Room, the Stereotype Room, the Photo-engraving Room, and those?

A. Yes. I think it is a good check ratio.

Q. Well, let me understand something, Mr. Houghton: What are we checking? Every ratio we come to is a good check ratio, and I haven't found out what ratio it is we are checking.

A. We are attempting here to make an allocation of costs, so we are applying series of factors to try to arrive at a sound and accurate figure so that we use various ones to confirm the possibility of getting an accurate distribution and not relying on any one single standard.

Q. Well now, if I understand what we are doing we check Column 2 against Column 3, because 3 is a good check ratio. Then, we check Column 3 against Column 2 because 2 is a good check ratio.

Is that the principle of this?

A. There are no check ratios in Column 2 and Column 3.

Q. Well, there are only check ratios in Column 4? Is [fol. 1337] that correct?

A. Partially. We are looking at different tables.

Q. I am looking at 133-B.

A. There are no ratios on that table. That is a summary table which shows the reallocations in terms of dollars that are brought forward.

Q. Well, I see; but we will still check Column 2 against Column 3. Then we turn around and check Column 3 against Column 2. Isn't that what we are doing?

A. No, sir; you are using the word "check" in a different sense now. These are the allocations, my reallocations under these two different standards.

Q. Well, you applied the ratios to make the allocations, didn't you?

A. That is correct.

Q. Well now, what do we do? Do we check the allocations, or do we check the ratios?

A. We check the ratios.

Q. Yes. And the allocations reflect the ratios, don't they?

A. That is correct.

Q. So, we might just as well check either one, shouldn't we?

A. No, sir.

Q. You think it is better to check the ratios?

A. I do.

Q. All right. I won't complain about that.

[fol. 1338] On these items of individual expense in the Composing Room: did you make any effort to credit the Composing Room with the work they do in setting up the financial page and the baseball results that go in the morning paper?

A. In the sense that I used the published pages ratio, I made it. That was the check. In fact, I think that is the best ratio for that department, and that should reflect the number of pages that are produced for each paper. Whether they are produced by one crew or another, that ratio should be accurate or should be an accurate basis for determining the relative activities of the two papers.

The Court: The what?

A. Published Pages ratio; that is, speaking of the Composing Room, now.

By Mr. Wilson:

Q. Well now, if one crew sets up all the financial page and it appears in both papers and you used the Published Pages ratio, how does that reflect in the expenses? The fact that the same crew has set the same page for both papers?

A. Well, the total expenses, we know, for the Composing Room. The amount of pages that are produced for the respective papers breakdown, according to my ratios, assuming that the ratios are applicable, the 31.6 for the States, in comparison with the balance going to the Times-Picayune, morning and Sunday; therefore, if we apply this 31.6 against the grand total of expenses for the Composing Room, we would come up with a figure which represents 31.6 per cent of the total Composing Room expenses that [fol. 1339] are chargeable to the States.

Q. Well now, Mr. Houghton, there are five editions, as you know, I assume of the morning Times-Picayune?

A. Five editions.

Q. There are.

Mr. Kramer: We will stipulate that, Your Honor.

By Mr. Wilson:

Q. There are five different press times? Five editions.

A. Five editions.

Q. Could we use any of your ratios to divide up the Composing Room expenses between those five editions of the morning edition?

A. I think the ratio applies. I mean, the ratio does apply to the aggregate, not within the breakdowns of the conditions.

Q. Well, if it will divide up expenses between the morning edition and the evening edition, why won't it divide up the editions within the morning edition?

A. The editions within the morning editions?

Q. Yes. I mean, you have the "Bulldog"; you have the Home Edition; you have the City Edition, and Country Editions.

Why can't you use this ratio of yours to divide up expenses between those?

A. Well, the ratio, as far as the pages are counted in terms of the editions, as a whole. At least, Media Records carries the figure for the pages and that is what I followed: the Media Records on the number of pages for each newspaper.

[fol. 1340] Q. Well, if Media Records counted the pages for the Country Edition and the pages for the City Edition, could you then apply your ratios?

A. Yes, I think so.

Q. Divide it up between editions?

A. Yes.

[fol. 1341] By Mr. Wilson:

Q. Mr. Houghton, I am going to ask you to assume that within the category of revenues called Cuts, Mats and Metals, or Cuts and Mats, whichever it is, that in 1949 the company received revenue in the amount of $2,123.43.

A. Do you want me to write these figures down as we go.

Q. I am going to give you what the figures are.

A. Two thousand what please?

Q. $2,123.43. In 1949,——

The Court: Did you say two thousand?

Mr. Wilson: $2,123.43.

Q. 1949, $2,310.85, and $4,845.55, from Proofs and Special Composition work. Wouldn't the proper way to handle that be to shrink the expenses of the Composing Room for each year by that amount before we applied our ratios?

It would be sound accounting practice, would it not?

A. Yes. Apparently both practices have been followed by the Company. You have spoken about shrinking the expenses, but the records I have received from the FBI apparently were not shrunk.

Q. And I am telling you, or, I am asking you to assume that these amounts are shown in the revenues figures under Cuts, Mats, and Metals show they were not shrunk, but I am asking you if sound accounting practices would not have been to shrink Composing Room expenses by those amounts before attempting to make any allocation of expenses?

A. Well, I think the matter of sound accounting practice [fol. 1342] there is a matter of alternatives. If you prefer to shrink your expenses and have a net figure that is one way of course. If you prefer to carry it as a year-end adjustment, as was done in the records which I received from the FBI, I see no reason why that is not sound as long as you take it into consideration.

Q. Well now, as I understand the expenses which you consider Composing Room expenses, your main item was the labor costs there, was it not?

A. Yes, sir. That is a very big item: $832,000.00 out of $854,000.00 in 1949.

The Court: What item was that?

A. The payroll for the Composing Room. That is the total for the Company.

By Mr. Wilson:

Q. And you gave no consideration to whether the day crew set any part of the morning or Sunday edition, did you?

A. In connection with what?

Q. In connection with your study.

A. Oh, yes. I used the Published Pages ratio here as a check against the Man Hour figures. The Man Hour figures reflect the respective crews. Published Pages is a check ratio against that.

The Court: Let me ask you this question: You stated that the Company should know what they are doing in each department: what the results are. Suppose the owners of the Times-Picayune Publishing Company were interested only in the net result? They could charge all costs to one [fol. 1343] account, make no allocation whatever between the two newspapers, could they not? It would be nobody's business but their own, would it?

A. That is correct.

Q. As long as the books properly reflected the operations of the Company, those books would be accepted, would they not?

A. It is a question of whether you wanted to know, for example, if you are producing refrigerators and automobiles, how much it cost to produce the refrigerators and how much it cost to produce the automobiles. Then you would make cost studies. If you are only interested in costs that is all you look at.

The Court: If you are only producing newspapers and you want to know how much you have made during the year,——

A. That is all you would want to know. But I think it would be good practice to know what it costs you to produce in each of the departments.

Mr. Flurry: May it please the Court, we, of course, are making no attack upon the Company for not having broken these costs down, but we have charged in the complaint that they have operated the States at a loss. It is a question of breaking the costs and revenues down.

The Court: I understand the Government's theory.

Mr. Flurry: It is not a criticism of the Company for not having done that.

The Court: I understand that. I think we have a question

of knowledge involved in that, too, have we not? You have a question?

[fol. 1344] Mr. Flurry: Yes, Your Honor.

The Court: It shows, I think, it is incumbent upon the Government to show not only that the States was losing money but that the publishers knew that the States was losing money and was willing to sustain that loss in competition,——

Mr. Flurry: That is right, Your Honor.

The Court: ——for the purpose of competing.

Mr. Kramer: The defendants are able to establish that they were completely unconscious, or not conscious of whether each operation was making——

The Court: You say the defendants are able to establish?

Mr. Kramer: I suggest that when the Government shows—if and when the Government shows that the one operation is being operated at a loss, making that assumption now, that that certainly shifts the burden of going forward to the other side that they did not know what was going on, because people are assumed to know, if the Court please, people are assumed to know.

The Court: Assumed to know what?

Mr. Kramer: What would be obvious to any intelligent man.

Mr. Wilson: I will certainly stipulate that the defendants knew what was obvious to any intelligent men.

[fol. 1345] The Court: I will say this, there is a great deal of this that is not very obvious to the Court.

By Mr. Wilson:

Q. Well, now, your next item there is the press room. In connection with the press room, how did you reflect the work that the press room does on the morning and Sunday editions?

A. As against the States, you mean?

Q. Yes.

A. Well, I used the three ratios, the Man Hours, the Published Pages and the Circulation Times pages ratios.

Q. I am sorry. I don't quite follow you. Where did you use the Circulation Times Pages ratio?

A. It is under the circulation standard. You are looking at the summary table. If you look at the detail table, you will see the different ratios.

Q. Well, you think that would adequately enable you to take into consideration, assuming that it is a fact, that this afternoon the day crew will be running three sections of the Sunday paper?

A. Yes. The Circulation Times Pages ratio is, in my opinion, the best check against that possibility, because the actual number of aggregate pages run across the presses throughout a year's time is reflected in that ratio and that should bear a close relationship to the press room activities.

Q. But neither on your published pages—is it under published pages that you used Circulation Times Pages?

[fol. 1346] A. No, sir. I used it in the Circulation Times Pages estimate.

Q. Neither published pages nor Man Hours would give us any information on that?

A. No. The published pages wouldn't help too much unless there was this problem of the two up versus four up, that is, running one paper through with more crews than the other. If that were the case, then the published pages might give us an approximation of that. Your Man Hours figures, of course, are subject to the possibility of error there. That is, if your crews—I mean if one crew is working on the other paper, why obviously—and the Man Hour records are kept only by payroll accounts, the morning and Sunday on the one hand and the States on the other, why then there might be some variations in that payroll account, and, therefore, the Man Hours may be out of adjustment.

There may be compensating factors, however. One may work for the other paper at one time, and vice versa. I don't think it always goes one way or the other.

Q. But, as a matter of fact, you have never been over there to see, have you?

A. No, sir.

Q. Whether it goes or not?

A. No, sir.

Q. Now, assume that in 1950 we received, within that category of income from Cuts, Mats and Metals, $2,362.00 from extra press runs.

[fol. 1347] A. What year is that?

Q. 1950.

A. You gave me a figure of $4,635.00——

Q. No, that was from the composing room, from proofs and composition work. I am just saying that, assuming we received in 1950, $2,362.00 from extra press runs and sale of empty ink drums——

A. What number is this that you are talking about now?

Q. We received income in the amount of $2,362.00 from extra press runs and sale of empty ink drums. Wouldn't that have been proper income to set off against the expenses of the press room?

A. Yes, if that were the facts. Then I would distribute it in the same ratio as between the two papers.

Q. Well, your next expense item is the stereotype room, and neither the Man Hours nor the Circulation serves as any adequate basis for allocating expenses in that category, does it?

A. What do you mean, adequate?

Q. Well, it gives you no adequate basis, you can't tell from the Man Hours because you don't know how much time is spent on morning or evening or how much time is spent on Sunday there, so Man Hours doesn't give you much help there, does it?

A. I think it gives you help. I mean you are building assumption into the figure. Now, it seems to me that when we find that the crews are shifting from one to the other, we can establish that they are shifting from one to the other, and out of the relationship to the payroll account, then we can question the figure seriously, but we have just [fol. 1348] as I am going to suggest to you—may I continue?

Q. Finish your answer, by all means.

A. But if we have other means of checking the Man Hour figure, we may not need to go to all the expense of running time cards or keeping exact records on every item that is produced for one paper or the other, and we can reach an approximation of how much of the costs should be allocated to the one paper as against the other. That was the whole purpose of my using the various ratios.

For example, circulation ratio happens to be 29.9. The

Company itself actually charged 28.1 per cent of the stereotype room expenses to the States, and that is based on the payroll costs. The Man Hours were 30.9 in that case, so that there is very little difference between any one of those three ratios. They are all in fairly close conformity.

Q. But, of course, you understand, do you not, that the Company's charge was made on the arbitrary basis of daytime and nighttime payrolls?

A. That is correct.

Q. So it doesn't help you any to find figures that check out with the Company's figures, does it?

A. It does if there is some basis for those figures. That is, in other words, the published pages bears a relationship to the activities to the stereotype room, which is my assumption, then that does serve as a check.

Q. Well, now, let's take the stereotype room. You know [fol. 1349] that one of those crews on that day shift is the nickeling crew, do you not?

A. I am not familiar with all the various crew activities.

Q. Well, now, what do you suppose a nickeling crew does?

A. I wouldn't be able to say.

Q. Well, don't you know that the nickeling crew is there to plate over for the Sunday Comic Section?

A. That may be. I am not familiar with the intimate details of all the operations within the stereotype room.

Q. And so you wouldn't know that the nickeling crew on the day shift works entirely on the Sunday edition, would you?

A. No.

Q. The next item that you have is the photo engraving department, and I believe we agreed a while ago, didn't we, that circulation doesn't have much relation to the photo engraving department?

A. I don't think it has as close relationship as the other ratios I used, that is correct.

Q. And, assuming that the day payrolls and the night payrolls are set up arbitrarily for the purposes of making charges on the Company's books but do not accurately reflect whether the people worked for the evening, the morning, or the Sunday edition, the Man Hours wouldn't be much of a check, would it?

A. If that were the assumption, Man Hours alone would not be sufficient.

Q. Well, now, what would be a good check?

A. Well, the check I used was the inches of zinc used in [fol. 1350] engravings.

Q. Well, do you think that the inches of zinc used—that the figure that you have there accurately reflects the inches of zinc used for engravings for the two papers?

A. Well, it seems to be fairly close to the 18.7, which the Company had allocated, and it is also close to the 19.1 in Man Hours, so it looks as though it is a fairly accurate reflection of the division of activities.

Q. Didn't you hear Mr. Frank testify as to how he got that figure? You were here when he testified, were you not?

A. I heard your questions and his answers, yes.

Q. Don't you remember that he testified that he went down to someone and got the total number of square inches of zinc used by the Company during a particular period?

A. Yes, sir, I heard that.

Q. He got that information, and then he went up and he got the breakdown that the Company was using, and he was rather surprised when he looked at it again to find out that what he had gotten was that old 80-20 ratio. Don't you remember?

A. I have heard you discuss it in Court.

Q. So, actually, this is just—your method was another way of applying the arbitrary 80-20?

A. Maybe in that respect I was too conservative.

Q. You may have been. You may have been too radical on the other hand. Now, on the mail room, have you used [fol. 1351] the exact allocations as shown across—in other words, have you used a Man Hour ratio under column 2, a Published Page ratio under column 3, and a Circulation under column 4?

A. Yes, sir.

Q. So that follows according to the heading of the table?

A. Yes, sir.

Q. Published Pages wouldn't have much relation to the work of the mail room, would they?

A. Yes, I should think so, because the weight of the

paper, that would bear a relationship to the number of pages, so that that would indicate the amount of handling which would be required, I should think.

Q. Well, in mail room expense, are you treating, within that item, postage and trucking charges?

A. I think this refers principally to the activities of the mail room within the building, not the postage. The postage may be in this item of other expenses as a very minor item, but I don't know. Of course, I wouldn't think that it would be supplies; but I think the mail room activities are confined largely to getting the newspaper ready to deliver out of the building, regardless of how it is sent, whether by trucks, through the carriers or by mail.

Q. Well, then, as I understand it, that is the work done by the people in stuffing the papers?

A. That is one function.

Q. That is your understanding of what that expense item is?

A. Yes.

[fol. 1352] Q. And so, the most accurate way of determining that expense would be on a Man Hour basis, wouldn't it?

A. It may be the most accurate, however, I think it is useful to compare that with the Circulation ratio because there may be some relationship between the amount of copies sold and the activities of the mail room.

Q. But what I am saying is that if we knew accurately the Man Hours spent on each edition, why then we would have the most accurate check of allocating that expense, wouldn't we?

A. I think so.

Q. Well, I ask you to assume that a time study of the mail room has shown that in excess of fifty-five per cent of the day payroll, time——

A. Pardon me.

Q. I say, I am asking you to assume that a time study has shown that in excess of fifty-five per cent of the time of the people on the day payroll is spent in stuffing the Sunday edition, and that the people on the night payroll spend no time in stuffing the six day evening edition. That would

considerably cut down the ratio that you have used, would it not?

A. You say fifty-five per cent of the day payroll exclusive of Sunday, is that correct?

Q. Fifty-five per cent of the day payroll——

A. Exclusive of the Sunday people?

Q. Yes, exclusive of Sunday people, is spent stuffing the [fol. 1353] Sunday edition, and that no time of the night payroll is spent stuffing the six day evening edition?

A. Yes, sir.

Q. I am asking you if it wouldn't considerably cut down the amount of expense which you have allocated to the States if you took into consideration those facts?

A. I think I would need a few more facts. In the first place; you say fifty-five per cent of the day crew. I think you need to tell me what proportion of the total crew, that is, morning, evening and Sunday, what proportion was devoted to this stuffing. That is, what proportion of the whole operation was done by the morning crew. I don't think you can conclude from the figures that your gave me that this ratio is wrong. In fact, the ratio is very low; it is only twenty per cent on a Man Hour basis, and where you have thirty per cent of all the copies that are for the States, it seems to me that the burden is a little heavy to challenge that figure. I mean it may well be that a cost study will reveal something different, but I would also like to know what proportion of the total expenses, the total payroll in the mail room, was devoted to this stuffing operating, too, before I concluded anything from the figures you gave me.

Q. Well, you have figures, do you not, that show how much, what percentage of the total expense the payroll is?

A. The payroll records show that nineteen per cent of the expense of the mail room was allocated by the Company to the States. My Man Hours ratio, which is a record of the [fol. 1354] Company, showed twenty per cent. Now when you have a circulation of thirty per cent in the States, that seems to me fairly conservative, that figure seems fairly conservative, one-third less than the ratio of Circulation.

Q. You think Circulation necessarily reflects the work of the mail room, as we understand it? I thought we agreed that was where we stuffed the paper.

A. Well, you stuff it among other things. You handle all the papers as they go through the plant and go out to be circulated.

Q. Well, if we were printing handbills over there, we wouldn't have anything to stuff, would we?

A. No, sir, unless you stuffed the handbills.

Q. It is a suggestion.

The Court: The Court will take a recess until twenty-five minutes to twelve.

(Short recess.)

The Court: Proceed.

Q. The item Advertising Expense on Government Exhibit 133-B was allocated by you in what ways? Now, you didn't actually follow what the top of the table says, did you?

A. This is the Published Pages that you are asking about?

Q. Well, now, under Man Hours, did you actually use Man Hours?

A. The Man Hours account, yes. Man Hours is followed in that allocation under Man Hours.

Q. And that required an allocation of Man Hours for [fol. 1355] classified advertising which is sold under the unit rate, did it not?

A. Yes, sir.

Q. And we would have just as many advertising solicitors to get the same amount of classified advertising if we only published it in one edition as if we published it in two editions, wouldn't we?

A. I am not so sure. If you had two editions, two newspapers operating without the forced combination unit rate, you might have a larger crew for the States in order to bring classified ads in.

Q. That is assuming that we were going to have some classified advertising in one paper that we didn't have in the other paper?

A. Yes, that they were both solicited on an unrelated basis, they weren't tied in together.

Q. But now when we get rid of one of the editions, we still have to keep the same crew to get the advertising for the edition that we keep, don't we?

A. Presumably. It is hard to tell under a set of different conditions than prevail today what your crews would be. When you get a whole new set of circumstances, it is hard to project into that unknown area. I don't know, you might reorganize your whole system of soliciting if you had just the one paper. There are a lot of assumptions built into that question.

Q. Well, there is no reason why we couldn't reorganize our whole system of soliciting and have two editions, is there?

A. No sir.

Q. So we will assume that we are not going to reorganize [fol. 1356] our system. Then we would have just the same crew for the morning edition, wouldn't we?

A. You mean by not reorganizing your system, you are going to keep the same crew, is that it?

Q. Well, we are going to do it in the same way, and we are going to get our classified advertising in just the same way we get it now.

A. You mean by forced combination?

Q. No, we are going to get it by having so many people calling on advertisers, so many people answering telephones——

The Court: Is that a question?

Mr. Wilson: Well, he asked me, and I am answering him. That is my answer to his question, Your Honor.

By Mr. Wilson:

Q. My question to you is: wouldn't we have to have the same number of people to get the same amount of classified advertising if we threw away one edition and forgot about it and kept one edition?

A. You mean one edition or one newspaper?

Q. Well, you call it one thing and I call it the other.

A. You called it two things this morning. I just wanted to get it straight.

Q. Well, we will say we are going to get rid of the Times-Picayune and keep the States.

A. Now, is that morning and Sunday or morning?

Q. Well, we are going to run the evening and Sunday like

it runs now. We are going to keep the States and we are [fol. 1357] going to throw away the six day morning edition.

A. I see.

Q. Now, we would have to have the same crew to get the same volume of classified advertising in that evening edition, and our Sunday, that we have to have to get it in the evening, Sunday and morning as it stands now, wouldn't we?

A. Pardon me. I have to get your illustration in order to answer it. That is six day States' operation you are talking about?

Q. No, we are going to have a seven day States' operation like we have now. We are going to run it six times in the evening during the week and on Sunday and we are going to drop the name of the Times-Picayune, so now it will be the New Orleans States, and on Sunday it will just say the Sunday New Orleans States instead of the Sunday Times-Picayune-New Orleans States. Now, don't we need the same crew to get the classified advertising in the same volume that we have got it now, that we presently have, to get classified advertising for the morning edition, the evening edition and the Sunday edition?

A. I don't know.

Q. Well, let me ask you this: does it take any more advertising expenses, as it is indicated in this item on 133-B, does it require any more advertising expense to get a classified advertisement that is only going to run one edition, than it takes to get a classified advertisement that is going to run both in the morning edition and the evening edition?

A. Well, it may not take any more telephone solicitors, [fol. 1358] that is an assumption. But my whole study here is to the question of whether you should distribute costs as between the two units which are accorded the revenues from those operations.

Q. But you see what I am trying to find out, Mr. Houghton, is whether we are going to be better off if we get rid of one edition. Are we going to be financially better off is what I want to know?

A. Well, I don't think those questions are directed toward that type of an answer.

Q. Well, it will help me some if I can find out how much expense I can eliminate.

A. Yes, I agree.

Q. It will be of some assistance to me, so what I want to know now is, does it require any more advertising expense to get a classified advertisement that is going to run only in the morning edition than it requires to get a classified advertisement that is going to run in both the morning edition and the evening edition?

A. I think it is difficult for me to answer that question without making some sort of a study of the records, the incidence of costs in relation to getting ads, whether you, under a different set of circumstances, have to do differently than you do now. So you are building some more assumptions there.

Q. Well, you built some assumptions on what the situation was before we owned the New Orleans States. Can't you build assumptions that will satisfy me on this problem?

A. I haven't, to my recollection, built any assumptions on [fol. 1359] prior to your ownership.

Q. Well, didn't you tell me that you surveyed the situation with respect to circulation prior to the time that we owned the States, and put in the——

A. At the time the States was taken over.

Q. Well, let's say at the time then, because that was two years before we had any unit rate on classified advertising. We took the States in 1933, if you recall, and we put in the classified unit rate in '35.

A. That is right.

Q. So you have got a period there in which to build your assumptions. Can't you build assumptions that will enable you to answer my question?

A. Now what is your question?

Q. Well, my question is: will it require any more advertising expense to get an advertisement that is only going to run in one edition of the paper than it will require to get an advertisement that is going to run in two editions of the paper?

A. I don't know.

Q. Well, could you answer that question for general advertising?

A. No.

Q. Is that because you don't know?

A. Yes.

Q. Well, you understand that general advertising is now [fol. 1360] sold at the unit rate, do you not?

A. That is my understanding.

Q. And you understand that wasn't true up until February, 1949—or 1950, I mean?

A. Yes, sir.

Q. Now you have used, as I understand your Exhibit 133-B, in columns 3 and 4, advertising lineage as a method of allocating expense, have you not?

A. Yes, sir.

Q. Don't you think that a better way to have done that would have been to take the revenue per line?

A. No. I don't think that revenues should be the standard used, necessarily, in the allocation of costs. I mean I think you will get tied up in a vicious circle if you are going to mix revenues and costs, all the time. You have got to look at them separately and see how much effort is put in on the one hand and how much revenue you get on the other. If you get them confused, I think you will be in a hopeless morass of confusions.

Q. Well, isn't it entirely possible that you would hire higher paid solicitors for one edition than you would for the other edition, they would be more valuable to you? In other words, if you have got an edition that has twice the rate that the other edition has, can't you afford to hire higher paid people to do the work, and you may have to hire them to sell at that higher rate, may you not? I may take a much higher powered——

[fol. 1361] A. You mean per employee?

Q. Yes.

A. I don't know whether the ratio would be in a direct or straight line relationship such as you suggest. These things don't go on a straight line upward sweep. Costs usually tend to taper off. I don't think you can assume that it is a straight line.

Q. Well, you see nothing wrong though in comparing the lineage in a paper that has a fifteen cent rate with a lineage in a paper that has a forty-five cent rate?

A. It depends on the way you compare it, for what purposes.

Q. Well, we used it here under two headings, both Published Pages and Circulation. We used a lineage comparison to divide up the advertising expenses, and I am just suggesting to you that advertising revenues might be a better method than lineage, and I am asking you if that isn't entirely possible, that we would have gotten a more accurate picture if we used revenues instead of lineage.

A. Is that the question?

Q. Yes.

A. No.

Q. Well, don't you think that we could reduce the item called advertising expenses for the Times-Picayune considerably if we would cut the rate in half?

A. Would you please repeat that question?

Q. I said supposing for the Times-Picayune we cut, say, the general rate in half, don't you think we could reduce [fol. 1362] our advertising expenses considerably? We wouldn't have nearly as many people selling that if we had just half as high a rate, would we? It would be such a bargain they would be running to our front door, wouldn't they?

A. That depends on the elasticity of the demand for your ads. If it is very responsive to the price and they will rush in to get a bargain in ads whether they need the ads or not, why then you might assume that you could cut the expenses.

Q. Well, they might rush in to bring us the money that they were taking over to some radio station, mightn't they?

A. That is possible, but I think there are other factors that are considered by advertisers besides price. He wants so much of a certain medium. If he doesn't want to go in there, he may not be responsive to cut in half of price. It might be worth trying, but I don't know whether it would yield the results that you anticipate. Also, it depends on what you have already in terms of the market.

If you have a very substantial portion of it already, maybe there is not much more that will come in regardless of price.

Q. Well, don't you think it would be entirely possible, to quote a newspaper rate that would draw considerable ad-

vertising away from television, radio, billboards, mail, direct mail, other media?

A. It is conceivable, yes. I don't know whether that is tried very often though. I mean we don't have any experience tables to go on, I don't believe. I have never noticed the price cutting device being used to pull from one medium. That is not my experience. I would be interested to see a study if any has been made of it.

[fol. 1363] Q. Well, do you know, for example, that the Kansas City Star has a milline rate of $1.25.

A. No.

Q. Well, we can't go into that. Your next item is editorial expense. Do published pages have any necessary relation to editorial expense?

A. In my opinion, the proportion of the total columns of reading matter has more direct relationship, and that is why I used that figure in preference to published pages.

Q. And you substituted that for published pages?

A. That is correct.

Q. How about circulation, what did you do about that?

A. I used that.

Q. You used the circulation figure?

A. Yes.

Q. Now, how about Man Hours. Did you use the Man Hours according to the payrolls?

A. Yes.

Q. Did you give any consideration to the fact that Mr. Dufour writes a column for the Sunday paper?

A. I made no adjustments on the figures, if that is what you mean. I took them according to payrolls. If they worked for the other paper in that respect the Man Hours would be delinquent.

Q. In other words, your allocation of editorial expense to the States—you gave no consideration to any work done [fol. 1364] by the editorial department on the States' payroll for the Sunday paper?

A. I did in the published pages estimate.

Q. Well, I thought you said you took columns of reading matter there?

A. Yes.

Q. Now, how would that reflect the work that they had done for the Sunday paper?

A. Well, 36.6 per cent, according to your own records, of the columns of reading matter were carried by the evening States, and the editorial department works on editorial matter, news of all kinds, in the newspaper. That is why that ratio was used.

[fol. 1365] Q. Well now, you have two figures here following editorial expense. You have office expense and general expense.

Now, those were items which were not allocated by the Company to the States, except for rather minor amounts?

A. Yes. You are talking about just office and general?

Q. Office and general.

A. Yes. Out of a total of about $600,000, you charged the States with about $2400 for those two departments, combined.

Q. And you determined, did you not, an allocation by which you would have allocated about $90,000 of office expense and somewhere around $110,000 of general expense to the States, did you not?

A. Yes, sir.

Q. Well now, did you give any consideration to how much of the office expense and how much of the general expense could be eliminated if we ceased to publish one edition of the paper?

A. No. That wasn't the basis of my analysis.

The basis of my analysis is as a going concern and how you distribute the costs as between the various units or products or papers, as it is here, within a going concern. I am not trying to determine what would happen if you abolish one part of the organization.

Q. Could you have made such a determination if you had started out to do so?

A. I think a determination of that kind could be made, but under a whole long list of assumptions and with probably much more study than needs to be devoted to this type of adjustment, bec. use you have to take into considera- [fol. 1366] tion a hypothetical of what may be, under a new set of circumstances, so that you have to build into your analysis many more variables than you have in this type of study, which is relatively simple in comparison.

Q. But, wouldn't that be a fairer way to determine whether it is costing The Times-Picayune Publishing Company money or whether it is putting money in The Times-Picayune Publishing Company's pocket to operate the New Orleans States?

A. No, sir. In my opinion, if you want to know what the States costs to operate, you give it its proportional share of the costs and see how it comes out.

Q. Does that tell us? When we have done that, does that tell us whether our over-all profit and loss for The Times-Picayune Publishing Company would be greater or less, if we did not operate the States?

A. No, sir, because, there, you have got the consideration of whether the States is being used to pull in business for the Times-Picayune, or vice versa. You have got a whole lot of factors that you have to consider, if you take an alternative set of assumptions.

This is only designed to see how the States is doing today or in 1949 or '50, and so on, not in some future time, under a different set of circumstances. It is a different organization.

The Court: Do you think it is a reasonable assumption that the Picayune may be operating the States in order to get more business for the Picayune?

A. I don't think anything is a reasonable assumption, [fol. 1567] as such. It all depends on that.

The Court: Didn't you say that they might want to keep the States going in order to pull in business for the Picayune?

A. They might, yes, sir.

The Court: You say, it is reasonable to assume.

A. Oh, it is reasonable to assume that. I wouldn't assert it before I looked into the market consideration.

It is something like the department-store illustration that I gave you. If you have a department that is losing money, it might pull in other business by the very fact that there is something attractive and women come in to patronize that particular section of the store and then they buy other things.

That might be the situation here. I don't know.

By Mr. Wilson:

Q. Well, let's take your department-store illustration and let's assume that you have a very busy department store, but you still have about, say, a space 40 x 40 that isn't being utilized. You have to have lights there so that somebody won't come along and stumble and break a leg and sue the store; so, it is lit up well.

You have got a 40 x 40 area there and there is nothing there, and you think: "Well, maybe it would be a good idea to put in a shoe department there."

Well now, in order to find out whether that was a good idea or not, do we have to charge to that shoe department part of our real estate taxes, part of our corporate excise [fol. 1368] taxes, part of our president's salary and part of our general manager's salary and part of our heat and part of our light, and all that? Is that the way we go about finding out whether it was a good idea to put that shoe department in?

A. If you want to know what it costs you to operate the shoe department, you certainly do. To determine whether you want to run the shoe department at a loss, that is something else again. You may very well have perfectly good reasons for operating that department at a loss, but you at least ought to know whether you are or not.

That is the whole basis for my analysis.

Q. If I understand your theory, and I think I am beginning to get it now: Your theory is that you can run part of your business at a loss and make money at that, isn't it?

A. Very conceivable. In the aggregate, you make money. That is correct.

Q. In the circulation department, Mr. Houghton, did you take off any part of the expense by reason of the fact that 35,000 Sunday papers are delivered by States' carriers?

A. No, sir.

Q. But you want to use the revenue from that as a deduction to offset something else, don't you?

A. Well, that is because your Sunday earnings were in the States' figure. That overstated the earnings.

Q. But we used that up yesterday on something else that you wanted to offset.

A. That is on the other side of the ledger. You consider

[fol. 1369] revenues on one hand and costs on the other. If you want to stick to costs, we will stick to costs.

Q. All right. We will agree that we have used up the revenues to offset some other item and we will go over to the cost side.

What I want to know is: Did you shrink the States' costs in any way by reason of the fact of whatever expense it takes to handle the 35,000 papers delivered on Sunday by States' carriers?

A. I didn't shrink them, but I used the circulation ratio and the man-hours' ratios and they were very close to what you had already allocated in the hauling of the Sunday paper. The costs of hauling, and selling and so on are in some relationship to the physical factor of circulation, so that I didn't see any reason why I needed to take anything out of this, because it is in line with your circulation ratio.

Q. Well, the costs of handling the Sunday paper would actually be a good deal higher than handling the daily paper?

A. In terms of weight, yes.

Q. Weight.

A. And the published pages reflect that.

Q. Well now, do we use published pages on——

A. No. I didn't happen to use it.

Q. ——on circulation?

A. It wouldn't have mattered very much, because, actually, the ratio is 31.6 and the man-hour figure was higher than that, 32.9. It wouldn't have mattered very much which ratio you would have used there.

Actually, it seems to me the figures that the company [fol. 1370] had allocated was in line. It was 30.1.

Q. I believe I covered this yesterday, but just in case I didn't: On your item of newspaper or newsprint, which is under the heading "paper," you had no information that in 1949 there had been a sale of waste paper, cores, and so forth, and also recovery from claims amounting to $48,313.37, did you?

A. $48,000——

Q. ——$313.37?

A. No, sir.

Q. Nor did you know that in these reports, and I refer

specifically to Government Exhibit 73, that in those reports contained in that exhibit, that amount had been taken from the newsprint charged to the Times-Picayune, morning and Sunday, and none of it had been deducted from the newsprint expense for the States.

A. I had no basis for such an assumption as that.

Q. You had no information to that effect?

A. That is correct.

Q. Mr. Houghton, did you compute a ratio of evening to morning circulation?

A. No, sir.

Q. Do you have figures there available which will, from which we can get that ratio?

A. Yes, Government Exhibit 128 gives you your circulation figures.

Q. Can you, from just glancing at the circulation figures [fol. 1371] for the years '48, '49 and '50, tell me whether or not that ratio is approximately 65 to 35?

A. Just any one year?

Q. Well, I am just taking the three years. They look to me like they are just about the same.

A. I imagine they would be, in the over-all ratio.

Q. They appear to be about the same, and I thought you could tell me whether they are approximately 65-35.

A. Let's see. Could I have a piece of paper? I am using this up?

Q. Certainly.

A. Yes. That would be right, 35 per cent; that is, 35 per cent to the States and the balance to the Times-Picayune, six days.

Q. So, the ratio between morning and evening editions is 65 for the morning and 35 for the evening.

Mr. Houghton, from your analysis of the reports drawn from the books of The Times-Picayune Publishing Company and from your study of the situation in New Orleans, do you think that the Times-Picayune New Orleans States, which is printed on Sunday, could be operated successfully if it wasn't supported by a daily paper? That is, a six-day paper during the week?

A. I don't think my study has prepared me to answer a question of that character. I don't think it is a premise for that at all.

Q. Well, it doesn't seem logical, does it, that we could convert the Times-Picayune New Orleans States into a weekly [fol. 1372] magazine instead of the seventh-day edition of a daily newspaper, does it?

A. Well, I don't know. I am in no position to answer a question of that type.

Q. Then, Mr. Houghton, I will ask you to assume that, in order to put out the Times-Picayune New Orleans States successfully, we have to have the support of a daily paper that is printed six days of the week.

If that is true, the daily paper and the Sunday paper really all go together and the publisher is entitled to consider all seven editions in figuring out his profit and loss, isn't he?

A. You mean, as a total result?

Q. Well, in determining whether he has got a profit and loss operation out of a newspaper.

There is no more real reason for pulling the Sunday paper out than there is for pulling out the Tuesday paper, is there?

A. Yes.

Q. Is that because it is bigger? Or because it brings a bigger price?

The Court: Do you say "putting" it out? Or "pulling" it out?

Mr. Wilson: "Pulling" it out of your calculations.

A. Yes. I think those two factors, among others, would be a consideration.

By Mr. Wilson:

Q. That is, it has more pages, gets a bigger price and has colored comics in it.

[fol. 1373] Do you think that would be a justification for separating it, rather than for separating the Tuesday paper?

A. Yes. I think there is quite a difference in the demand schedules for the two. I think there are probably many different readers, and this is just an assumption.

You are asking me to assume; but I think there are probably many who read the six-day morning who don't read the Sunday, and vice-versa.

Q. You are the first one I have found, Mr. Houghton, that reads that way. You told me you didn't read the Sunday.

A. Maybe I don't constitute a representative sample. I don't know. I switched to the Item.

Q. So, you read two Saturday papers and no Sunday paper? Is that it?

Now, Mr. Houghton, I have asked you to assume that the successful operation of the Sunday paper is dependent upon a supporting six-day operation; in other words, that it takes a seven-day operation, all the way through, if you are going to put out a successful paper on any one day and particularly on Sunday.

Now, you knew, did you not, that the New Orleans States, before it was purchased by The Times-Picayune Publishing Company, was a seven-day operation, publishing six days and Sunday?

A. Yes.

Q. And you know that before The Times-Picayune Publishing Company purchased the New Orleans States, the [fol. 1374] Times-Picayune was a seven-day operation, publishing six days and Sunday?

A. Yes, sir.

Q. And you knew that, after the Times-Picayune Publishing Company bought the New Orleans States and commenced printing that as its evening edition, it put out a Sunday edition called The Times-Picayune New Orleans States, did you not?

A. It is my recollection that there was a little lag there in the names. Is that correct? It was called the Times-Picayune for a while and then they added the New Orleans States. Wasn't there a little hiatus there?

Q. Maybe for a very short period of time, but it is the Times-Picayune News Orleans States?

A. It is today, yes.

Q. And has been for almost twenty years?

A. Yes, sir.

Q. Well now, wouldn't it be just about as reasonable to say that the States Sunday paper swallowed the Picayune as to say the Picayune Sunday paper swallowed the States?

A. Would you repeat the question, please.

(The Reporter read the last question.)

A. Well, it is always one of those problems when you have a merger as to which one swallows the other; but, as I recollect, the Times-Picayune was the larger of the two Sunday papers. Usually, in any merger, the small one doesn't swallow the large one; it is the big one that swallows the small one.

The Court: Isn't the Sunday edition a combination of the [fol. 1375] Picayune and States, really, in your opinion? In other words, don't the two staffs collaborate in producing the Sunday edition?

A. I don't have any information to have a worthwhile opinion on that.

By Mr. Wilson:

Q. Just to keep the record straight, Mr. Houghton: I think maybe I agreed with you when you said there was a period of time when the Sunday paper was not called the Times-Picayune New Orleans States, and I am informed that ever since The Times-Picayune Publishing Company purchased the States, the Sunday paper has been called the Times Picayune New Orleans States.

A. Was that true of every issue of every edition?

Q. I am so informed.

The Court: You are talking about the Sunday edition?

A. Yes.

Mr. Wilson: Yes, the Sunday paper.

By Mr. Wilson:

Q. Mr. Houghton, on my assumption that it takes a seven-day operation to put out a successful Sunday paper, wouldn't it be proper to consider all seven days in determining whether the newspaper was being operated at a profit or a loss?

A. It all depends on our purposes. You might be interested, as a businessman, in knowing whether the Sunday operation is profitable as against the six-day.

Now, how you break your accounts down is dependent [fol. 1376] entirely on what you want to know about your business.

Q. Well, Mr. Houghton, if you are going to charge somebody with operating a newspaper at a loss in order to try to monopolize a market, don't you think we ought to give them the benefit of the seven-day operation, rather than pick out some part of it?

A. Well no. That depends on the character of the market we are considering.

If we are considering the allegation that you are monopolizing in the daily field, you have got to look to the daily field. It all depends on what you are looking to, the purpose.

Q. You are making the assumption that there is a daily field and a Sunday field.

COLLOQUY BETWEEN COURT AND COUNSEL

Mr. Flurry: May it please the Court, we object to this line of examination.

The Complaint states what the charge is. We think the examination here goes outside that question. The Complaint defines what the States is treated as in the Complaint; and, naturally, it would be assumed that the cost accounting which the Government offers is based upon the theory involved in the Complaint.

Mr. Wilson: If the Court please, Mr. Flurry's argument puzzles me a little bit.

I take it what he means, If we had been charged with monopolizing the Tuesday field, we could only look at our Tuesday operation, and it wouldn't be fair for me to ask about what happened the other six days of the week.

[fol. 1377] The Court: Let me see if I understand the objection. I don't quite follow it.

Mr. Flurry: The point is, Your Honor, that the Complaint charges a loss in the six-day operation, and the general denial of that paragraph by the Defendants, it seems to me, forms the issue on that question as to whether or not the six-day evening States operated at a loss and that is the field of the operations in which the losses are charged by the Government and which have been denied by the Defendant.

The Court: Do you want to add something to that, Mr. Kramer?

Mr. Kramer: I thought I might also add, if the Court please, that it is the Government's position, which I don't want to argue now——

The Court: The Government labels the States as a six-day operation.

Mr. Kramer: It is the Government's position that the evidence shows that the Defendant corporation publishes two papers, the Times-Picayune, morning and Sunday, and the States, six-day week.

That is Argument No. 1.

The Court: Because you lab*el* it a six-day operation doesn't make it so, of course.

Mr. Kramer: No, Your Honor, absolutely not. You have to find whether that contention is wrong or right, ultimately.

The second contention is that, in any event, regardless of the fact we charged only a six-day operation loss and [fol. 1378] the charge was denied categorically.

That is our two-pronged argument.

The Court: The objection is overruled.

Mr. Wilson: Will you find my last question.

The Court: It seems to me, on that basis, what we are trying to do is segregate the operation into two parts and then proceed under the part which is most favorable to the Government.

Mr. Kramer: I understand You Honor's opinion. I wanted to consult with Mr. Murry. I may be able to make a suggestion which will shorten the whole thing, if you will indulge me just a moment.

The Court: Do you gentlemen want time?

Mr. Kramer: It might be helpful.

The Court: It is almost time for the noon recess. We will recess until two o'clock.

(Whereupon, at 12:30 o'clock, p. m., a recess was taken until 2:00 o'clock p. m., of the same day.)

[fol. 1379] AFTERNOON SESSION

Mr. Kramer: If the Court please, the Government talked over the situation at lunch and came to the conclusion that it was unquestionably our duty to do two things at this

point: First, to make our position clear; and, second, in making that position clear, to indicate how perhaps depending on Your Honor's view, the trial could be shortened, and why; therefore, with Your Honor's indulgence, I would like to speak for perhaps ten or twelve minutes.

The Court: All right.

Mr. Kramer: At the outset of what I have to say, I want to make it perfectly clear the Government concedes, as a matter of fact, if revenues from the Sunday operation are allocated on the basis of circulation to the States, the States has not been operated at a loss during the period for which we are contending.

We do not think that Sunday revenues should be allocated to the States for reasons which I am about, briefly, and very briefly, to indicate.

We assert that, at this stage in the trial, having heard only the Government's side of the story, the clear preponderance of the evidence thus far establishes the Defendants published two papers, Times-Picayune, morning and Sunday, and States, evening.

Now, the evidence which we rely upon for that position, I would like to review with great brevity.

Government's Exhibits 6, 7 and 8, which were numbered, were obtained because they were used in the Tims' deposi-
[fol. 1380] tion and which have never been called to Your Honor's attention by the Government, so far as I know, other than by mention, are financial statements of The Times-Picayune Publishing Company, prepared by Haskins & Sells and are statements prior to this lawsuit.

They treat the revenues in the following breakdown: Times-Picayune, the New Orleans States and Radio Station WTPS.

Now, it is a question of fact, of course, whether that allocation was proper or whether the ones that will be contended for in this trial are proper.

We do think, to say the least important, that this was the allocation made before the lawsuit arose. I am not now contending that the allocations within the framework of that decision were right or wrong. I am contending that that is the way they treated the papers they published before we began the lawsuit.

I also want to call Your Honor's attention to Government Exhibit 126, which we read from and which was written by Haskins & Sells on May 18, 1945, which has the paragraph we read, in which Haskins & Sells has this to say to the Company:

"The books of the Company report an allocation of expenses with respect to the 'Times-Picayune' and 'New Orleans States'.

"This allocation which, in some instances, is made on an actual basis is generally on the basis of 80 percent to the Times-Picayune and 20 percent to the New Orleans States.

"In this connection, it was noted that, except for [fol. 1381] certain relatively unimportant items, no allocation is made of maintenance, office and general expenses, all such expenses being charged to the operations of the Times-Picayune. In addition, insurance, depreciation and taxes, other than social security taxes, are charged to the operation of 'The Times-Picayune'.

"If it is desired that the Company's records reflect separately the net income of 'The Times-Picayune' and 'New Orleans States,' we suggest for the consideration of the management the advisability of the Auditing Department's making a study to determine the basis of allocations of all operating expenses to the operations of the two newspapers."

Now, the third bit of evidence on which we rely for our position is Government Exhibits 93 and 94, which are the affidavits submitted by Mr. John Tims to the Audit Bureau of Circulation referring to the Times-Picayune, morning and Sunday and States, evening.

We also call attention to G-112 and -113, G-112 being the Associated Press contract which refers to the States and G-113 being the one that refers to the Times-Picayune, a. m. and Sunday.

Now, G-142 was the ad which we referred to very recently, so that I won't——

The Court: Fight?

Mr. Kramer: Fight.

I only want to read one sentence in that.

"To the unduplicated coverage of metropolitan New Orleans, the Times Picayune offers thorough daily and [fol. 1382] Sunday coverage of the able-to-buy families of the prosperous trade area from which 21 per cent of New Orleans retail sales originate."

Now, during the trial thus far, I have referred continuously to statements made prior to the beginning of the lawsuit. I would like to read one paragraph from the Gypsum Case. That is 333 U. S. 395, and it is the Supreme Court speaking on the weight to be given to evidence:

"The Government relied very largely on documentary exhibits and called as witnesses many of the authors of the documents. Both on direct and cross-examination, counsel were permitted to phrase their questions in extremely leading form, so that the import of the witnesses' testimony was conflictive.

"On cross examination, most of the witnesses denied that they had acted in concert in securing patent licenses or that they had agreed to do the things which, in fact, were done.

"Where such testimony is in conflict with contemporaneous documents, we can give it little weight, particularly when the crucial issues involve mixed questions of law and fact."

[fol. 1383] I made one statement this morning, Your Honor, which I have regretted tremendously ever since I made it because it was subject to misinterpretation, and that was the remark concerning an intelligent man. What I meant and all I meant—and I mean this very, very strongly——

The Court: Why are you referring to having made the statement?

Mr. Kramer: Because it is subject to misinterpretation. I wasn't meaning to contend and I do not mean to contend any more that any intelligent person could see it at a moment's notice.

I do contend that an intelligent business man, daily watching his operations and having received from Haskins

& Sells Government's Exhibit 126 and the other exhibits, knew or should have known that the six day States was being operated at a loss.

Now, that is, of course, not testimony. That is the Government's view.

But what we want to make clear once more is that there will be no contention by the Government that—and we offer it to the defendants rather than to the Court for such aid as it may be—that there will be no contention from the Government that if you take profits from Sunday operations and allocate it on the basis of circulation to the States, that the States was being operated at a loss. It wasn't, if that can be done.

[fol. 1384] Mr. Phelps: Does the Court wish to hear from us in connection with Mr. Kramer's statement?

The Court: I might if I knew what the purpose of Mr. Kramer's remarks were.

Mr. Kramer: The purpose of Mr. Kramer's remarks were to explain in detail the basis for our action as to any questions regarding what would happen—the question of Mr. Houghton as to what would happen if you allocated Sunday revenues to the States. We, of course, have no right——

The Court: What is the basis of your theory that none of the Sunday revenues should be allocated to the States? Don't you think there are many people who take the Sunday paper because they happen to take the States?

Mr. Kramer: The answer to that question is: I don't know, Your Honor, but it is our position that the defendants have treated consistently before this trial in that manner and—I think I would concede this, Your Honor, that they certainly should be permitted to show that I am wrong when the time comes. Otherwise, you wouldn't have a fair trial—and the objection was made at the time, frankly, more for the purpose of getting our position over so that we wouldn't be—I started to say wasting, perhaps consuming time would be better, to prove it.

The Court: It seems to me the Government is in this position, that it must not only establish that the States was operating at a loss but also that the operators, that is, Publishing Company, knew the States was operating at a loss,

and beyond that, that they were willing to operate the States [fol. 1385] at a loss for the purpose of competing with the Item, the New Orleans States in competition with the Item. You don't go along with that?

Mr. Kramer: No, I don't.

The Court: Your own witness, under cross-examination, said that there might be a very good reason, there might be a legitimate reason for the willingness of The Times-Picayune Publishing Company to carry on with the States even at a loss other than the desire to compete with the Item in the evening field.

Mr. Kramer: Yes, Your Honor. Well, if this witness doesn't know, and it is purely an opinion, purely without proof as to why they are doing it——

The Court: Have I heard any evidence which would establish that the reason for their willingness to continue the States was to compete with the Item and to harm the Item?

Mr. Kramer: Our position is not that they continue the States for that reason. Our position is that the States, for all we know, could do very well if they were changed, so that they were operating at a profit. I just want to make one thing clear——

The Court: Don't be concerned about the remark about intelligent people. I know it wasn't directed at the Court and I know you meant nothing by it. Don't let that concern you. I think that is one of the things you have been a little concerned about. I understood the situation.

Mr. Kramer: Thank you, very much, Sir, but let me make these points briefly: whenever I refer to the States, I am [fol. 1386] only talking about a six day operation. It is absolutely true that we must prove, first, that the States is operating at a loss, and, second, that they knew it in the legal sense. Now, we want to make it clear, perfectly plain. I know of no witness of the Times-Picayune who is going to get up on this stand, that we are going to produce, and I have no letter written by Mr. Tims which says, "We are operating at a loss."

The Court: You rely upon Haskins & Sells' statement?

Mr. Kramer: We rely upon what we say the Court can rely upon, the preponderance of evidence based upon the facts. That is, this man is watching this operation every

day and he receives a letter from Haskins & Sells saying that he ought to allocate expenses where none had been allocated and that a quick check of three minutes' time told him that if he would start allocating the expenses in that manner, he would be in the red. That is our position.

The Court: Very well.

Mr. Kramer: We understand that Your Honor has overruled our objection, but the least I think we ought to get out of this is the Government's position as to the answer to the question, if you allocate Sunday revenue on the basis of circulation, the States would not have a loss.

The Court: Even after you allocated the portion of the expenses which were not previously allocated to the States?

Mr. Kramer: That is right, Your Honor, even after——

Mr. Phelps: If the Court please, I might just say one or two things apropos of the one issue of whether the States [fol. 1387] is entitled to the revenues of the Sunday paper. My views are diametrically opposed to those of Mr. Kramer. I think the record shows very clearly that the Sunday was a merger of two Sunday papers, that it was a merger of features, that it was a merger of comics, that it was a merger of staffs, that it was a merger of circulation. I think the evidence already in the record shows that, assuming that duplication of about twenty-five per cent between the States and the Times-Picayune, there is still seventy-five per cent of the States' circulation which do not take the morning Times-Picayune. That, based on the circulation figures of the Times-Picayune-New Orleans States, it is perfectly apparent that that seventy-five per cent who do not take the Times-Picayune do subscribe to the Sunday Times-Picayune-New Orleans States. So that it is perfectly apparent on the record itself that the States is a seven day operation.

In so far as this theory of lifting something from our records which Mr. Kramer has proposed in line with the Gypsum case, it is equally apparent that we knew and the Government knew that those figures were arbitrary figures, that they were for our own purpose, and it seems to me completely fallacious to argue that the Government can select part of those figures and reject part of those figures.

The Haskins & Sells' report said if we wanted an accurate breakdown, they would give it to us, but the breakdown was sufficient for our purposes, and until this lawsuit, we have never had any occasion to ask them for an accurate breakdown. Thank you, Your Honor.

[fol. 1388] (Mr. Houghton resumed the stand.)

By Mr. Wilson:

Q. Mr. Houghton, I hand you a photostat that has been marked Defendant's Exhibit 18 for identification. Would you tell the Court what that is a photostat of?

A. It appears to be a photostat from a front page of the Times-Picayune-New Orleans States, dated July 22, 1933, Sunday.

Q. And that would be the first issue after the purchase of the States by the Times-Picayune, would it not?

A. Yes, sir, I believe so.

Q. Would you read the box in the right hand corner—first I will offer Defendant's Exhibit 18.

Mr. Wilson: I offer Defendant's Exhibit 18 in evidence.

The Court: It will be admitted.

(The document marked Defendant's Exhibit 18 for identification, was received in evidence.)

By Mr. Wilson:

Q. Would you read the box in the right hand corner, Mr. Houghton?

A. Beginning with "Swamped"?

Q. That is right.

A. "Swamped. We knew that the demand for the big combined Sunday Times-Picayune and New Orleans States containing twenty actual pages of comics would be great. Thousands of additional copies were printed to supply the [fol. 1389] anticipated extra demand, but we underestimated, and since last night we have been swamped with orders and re-orders. To those who were unable to obtain a copy, we apologize. Next Sunday's edition will be stepped up again to care for those who were unable to ob-

tain a copy of this issue. Times-Picayune and New Orleans States."

Q. Would you read the box that appears in the middle at the bottom of the page in the Washington Merry-Go-Round column.

A. "Washington Merry-Go-Round will appear daily in the New Orleans States, and will appear every Sunday in the Times-Picayune and New Orleans States."

Q. Thank you. Well, Mr. Houghton, have you examined Government Exhibit 141?

A. Yes, sir.

Q. That would indicate, would it not, that about twenty-five thousand carrier circulation of the New Orleans States was not taking the Times-Picayune morning, would it not?

A. Yes, I believe so.

Q. So, presumably, there were twenty-five thousand customers available for the Sunday paper who, presumably, had been taking the New Orleans States Sunday paper before. Is that not true?

A. Yes, sir.

Q. And I believe you testified earlier today that you discovered that some thirty-five thousand Sunday papers were delivered by carriers who were delivering the New Orleans States daily, is that right?

[fol. 1390] A. Yes, sir.

Q. Well, considering the information that you were able to glean from Defendant's Exhibit 18, and the fact that additional circulation was added through combining the States with the Times-Picayune on Sunday, don't you think that the States made some contribution toward the new paper called the Times-Picayune-New Orleans States?

Mr. Kramer: Would you read that back, please?

(Question read by reporter.)

A. Well, I don't know whether I would be in a position to answer that question. It is beyond the scope of my studies.

Q. Well, you are a well trained man. I am asking you what you think about it, what is your opinion, in view of your economic training?

A. Well, it may well be true that they contributed something to the Sunday operation. It may well also be true

that the six day States operates independently of the morning and Sunday, and that there may be economic effects arising therefrom.

Q. Does that have anything to do with my question as to whether you think the States contributed something to the new Sunday paper?

A. Well, it is just an attempt to give a rounded out opinion.

Q. Well, now, have you heard enough of the testimony here in this trial to know that the editorial writers on the States prepare a page for the Sunday paper, and that Mr. Dufour, Mr. Martinez, Mr. Fitzpatrick, all on the States, write columns for the Sunday paper, and that many of the [fol. 1391] features carried through the week in the daily States are found in the Sunday Times-Picayune-New Orleans States, and that the comic sequence is carried from the States right on through the Sunday paper, the Times-Picayune-New Orleans States?

A. It appears reasonable. I don't know the facts, but I presume they are correct.

Q. Well, wouldn't that indicate that the Sunday Times-Picayune-New Orleans States is just as much the seven day edition of the New Orleans States as it is the seven day edition of the Times-Picayune?

A. Well, I think that would be a question of relativity. You say "as much". If the Times-Picayune staff contributes more to the Sunday operations, or more closely connected with it, then I wouldn't say that it would be the same, or as much, I should say.

Q. But to some degree then, you think it would be the seven day edition of the New Orleans States?

A. Yes, it may be in some degree.

Q. Well, now, if you were a follower of the comic strip "Blondie" and since you read the daily States, I assume that you know that appears in the daily States, and you wanted to read it on Sunday, you would buy the Times-Picayune-New Orleans States, wouldn't you?

A. Yes, sir.

Q. Well, except for the arbitrary assignment of payrolls as charged to one paper or to one edition or to the other edition, you know nothing about who works on the New

Orleans States and who works on the Times-Picayune, do you?

[fol. 1392] A. That is correct.

Q. Well, now, if the evidence in this case eventually demonstrates that the vast percentage of the Times-Picayune Publishing Company employees work on both papers, and also work on the Sunday paper—I mean—and I mean work on the States, work on the Times-Picayune morning, and work on the Times-Picayune-New Orleans Sunday, wouldn't you think that a substantial contribution had been made by both papers from which came the Sunday paper, the Times-Picayune-New Orleans States?

A. Was that question if the majority of both——

Q. If the vast majority of the employees worked on all three editions. I mean, wouldn't that indicate to you, as an economist, that the Sunday paper, the single Sunday paper, is the product of the Times-Picayune Publishing Company and it is actually both their morning editions and their evening editions combined to make a Sunday edition?

A. I don't know whether I got the real point of your question.

The Court: Read the question please.

(Question read by reporter.)

A. Well, I don't know whether that necessarily follows. If you want an anology, it seems to me that the vast majority of the employees of any organization might work on three different products or two different products, and the question of whether they operated them at a profit or loss or whether they——

The Court: What has that got to do with it?

A. Well, it is a question here—he is talking about the [fol. 1393] majority of people working on the papers and it is a question of whether that in itself constitutes a basis for saying that, therefore, a third product is a part of two other products. I mean we divorced ourselves from the concept of the newspaper, as such, and think of three different products. We have a morning product and an afternoon product and a Sunday product.

The question, as I understand the question, is no matter

whether the employees work on all three products that they are necessarily—that two of them become merged with a third.

The Court: You think it is something entirely independent and different?

A. If they were products like refrigerators and automobiles and vacuum cleaners within the same manufacturing plant——

Q. Well, is your analogy quite the same? We are talking about a manufacturing plant, Mr. Houghton, where you have got an evening newspaper and the evening newspaper has been going along for years printing the evening and Sunday morning, and you have got a morning newspaper that has been going along for years printing morning and Sunday, and the two are combined under the same management, and from then on you have a morning edition, which was your morning paper before, and you have an evening edition, which was your evening edition before, and you put out a single Sunday paper which bears the stamp of both papers. Now does it strike you that that situation is analogous to a manufacturing plant that is making automobiles, vacuum cleaners and egg beaters?

[fol. 1394] A. Well, you could call the egg beaters by the name of the two other products, if you preferred. You could call them—I mean the label—in other words, that isn't what counts.

Q. All I want to know is if that seems analogous to you?

A. My point is that because the label itself is in view does not necessarily establish a thing as a joint outcome of two other things. I think it is a question of whether there is a differentiation between products and whether, in the case of an economic question, as an economist, whether they are related within the market structure that they face in the business sense of the word, and that is the only way which I, as an economist, can analyze that sort of a question.

In my view, you need to look at products separately if you want to determine their market characteristics or how they behave in a certain market, if there is a basis for differentiation between those products, and I think there is a basis for differentiation between a morning daily paper

and an evening daily paper, and I think there is a differentiation between those two and a Sunday paper.

Q. Well, that brings me back to my question, Mr. Houghton, as to whether you can successfully operate in this market a Sunday paper without the support of a six day daily paper?

A. Are you speaking only of the New Orleans market or the newspaper field?

Q. The New Orleans market.

A. I can't speak for the New Orleans market. I know there are some—I understand there are some—I don't know [fol. 1395] the names of them, I have heard there are some Sunday papers that operate without any attachment to daily papers.

Q. Well, now, are you thinking of This Week magazine or something like that?

A. No, sir, actual newspapers.

Q. Well, do you know in what cities those are?

A. No, I would have to ask somebody to recall it to my mind, but I have heard that.

Q. You are not thinking of the Saturday Evening Post, are you?

A. Sunday newspapers in the accepted common sense of the term.

Q. Well, of course, if it will help you any, I can tell you that in Bethany, Missouri, where I was born, we have a paper that comes out only on Thursday, but I don't think——

The Court: We are not interested in that piece of information.

Q. Well, would you be satisfied, Mr. Houghton, that the Times-Picayune, in working out its revenues, should have added to its daily revenue the Sunday revenue?

A. Well, if you want an answer in the framework of the work I have done, which may not be exactly responsive to your question, my only purpose was to see what the States six day operation was doing aside and apart from the rest of the organization. Now, you can split it up any way you want and analyze your costs, as far as the cost accounting [fol. 1396] job is concerned.

Q. Well, then, if I get the import of your answer correctly, when you started out to make your analysis, you were told to analyze the six day daily States and forget about the Sunday paper?

A. That is correct.

Q. You were told, they don't get any of that revenue; and you stick to the six day?

A. That is correct.

Q. So your work was all done under instructions as to how it was to be done; that is, you were instructed to handle only the six day daily paper, the evening paper?

A. That is correct, as a part of the total operation.

Q. And throw everything else out?

A. No, not exactly out.

Q. I mean instructions were to determine whether the six day States was operating at a profit or loss?

A. Yes.

Q. And you understood those instructions to mean that you were to exclude Sunday and morning from that?

A. That is correct.

Q. And you are not here to tell us whether it was right or wrong to have you do that?

A. No, sir.

Q. Very well. Mr. Houghton, I was going to go into this in some detail, but I think it is unnecessary in view of [fol. 1397] what has been said. Is it your understanding that if it is proper to allocate Sunday revenue to the six day daily States then, unquestionably, the six day daily States has been operated at a profit every year from 1947 to date?

Mr. Kramer: Isn't that what we stipulated, Your Honor?

The Court: Yes.

Mr. Wilson: I wanted the record to show that that is his understanding of what it is.

A. Yes, sir.

[fol. 1398] By Mr. Wilson:

Q. Now, Mr. Houghton, I wish you would turn to Government Exhibits 133-A, B, C, and D, and for each of those years, would you—I think the easiest way would be for you just to make a note.

A. (Obtaining documents.)

Q. Have you got it on there?

I would like for you to plot on here ("G140-B")—and I brought you some material so it will make it easy.

The Court: This is 140-B?

Mr. Wilson: Yes, 140-B.

Q. I wish you would take the blue yarn here and with these thumb tacks let's plot the revenues for the States from 1947 to 1950, assuming that your centerline is two million dollars.

A. Revenues?

Q. Yes.

The Court: You mean where the zero line is?

Mr. Wilson: Where the zero line is: two million dollars.

Q. I would like to plot the revenues for 1947, '48 and '49.

A. What do you mean by "revenues?"

The Court: As allocated by the Company?

Mr. Wilson: And which he accepted; yes, sir.

A. They are plotted right here, sir.

Q. No; that is——

A. You don't mean the profit.

Q. No; I said revenues: revenues, as shown on 133-A, B, [fol. 1399] C, and D.

A. All right, sir.

(Using colored yarn: red, blue, and yellow, witness indicates locations of lines with thumb tacks on Chart 140-B.)

Q. Using Government's Exhibit 127, take the Revenues from that.

A. I believe the totals are here. (Plotting) What are your scales to be?

Q. A hundred thousand.

Now, will that be reasonably accurate for 1948 and '49?

A. (Indicating placement of tack.)

Q. Now, let's take the yellow yarn and plot the Expenses as allocated by the Company.

A. (Plotting.)

The Court: You are making a distinction as between years?

Mr. Wilson: He says it will be indicated. We have put a tack in to show.

The Court: I meant the years intervening between '47 and '50.

Mr. Wilson: Yes. He is taking that into account as he does it.

The Court: All right.

I am thinking about this record, now.

Mr. Wilson: Once we get it set up I am going to ask him [fols. 1400-1401] to interpret it for us.

The Court: Is it going into the record with the yarn on it? I anticipate a great deal of difficulty about this exhibit, because the two million dollars, for example, is not marked on the margin.

Mr. Kramer: The big ones are not in evidence, Your Honor, either. We haven't offered the physical exhibits.

The Court: I realize that is correct. You have offered the photostatic copies.

Mr. Kramer: That is correct: subject to changing the tables on some of them.

The Court: That is correct.

By Mr. Wilson:

Q. Now, will you plot the reallocated expenses, using any one of your reallocations that you care to select: whether you use Man Hours, Published Pages, or Circulation: whichever one you think.

A. (Plotting.)

Q. Now, Mr. Houghton, you have plotted for me on this blown up copy of Government Exhibit 140-B the Revenues of The Times-Picayune Publishing Company as shown by the blue yarn here, have you not, assuming that the zero line represents two million dollars and each of the scales up and down are units of one hundred thousand dollars.

A. Yes, sir.

Q. And the yellow yarn on this exhibit indicates the Expenses of the Times-Picayune Publishing Company as allocated by it in its reports which were drawn from their [fol. 1402] books and were eventually furnished to the Federal Bureau of Investigation.

A. That is correct.

Q. Now, the red line: Will you tell us what the red line across the chart indicates?

A. That is the Expenses according to the Government's reallocations.

Q. Which allocation did you use?

A. The Circulation.

Q. You used Circulation as the basis of it?

A. Yes.

Q. Mr. Houghton, the Revenues of the States, as allocated by the Times-Picayune Publishing Company in its own reports and as accepted by you in making your calculations here have been steadily on the increase from 1947 to 1950, have they not?

A. The gross revenues; yes.

The Court: Which is the Revenue?

Mr. Wilson: Gross revenue is the blue line, Your Honor.

Q. And those revenues were approximately two million dollars in 1947 and they are nearly two million five hundred thousand for 1950, are they not?

A. That is correct.

Q. The expenses of the Times-Picayune Publishing Company, as allocated by it on its own books and reflected by the reports which were taken from those books, have more or less followed the same pattern throughout the four-year period, have they not?

[fol. 1403] A. As which, now?

Q. As the revenues. That is, the expense pattern has approximated the revenue pattern. When I say "Expense" I mean the expenses as allocated on the books of the Times-Picayune Publishing Company.

A. Yes, sir. I think the gap has been narrowing, if they are plotted by way—I think there is a narrowing.

Q. Even on their own expense basis, the difference between Expenses as they allocate them and Revenues as allocated by them, has become less over the years?

A. Well, in other words, the Expenses have risen faster than the revenues.

Q. Expenses have been rising faster than Revenues?

A. That is correct.

Q. Well now, using your method of allocation, and I take it that the picture would be approximately the same, if we used either Circulation, Published Pages, or Man Hours, would it not?

A. Yes; approximately.

Q. It would be almost exactly the same regardless which one we used?

A. That is correct.

Q. In 1947, by your method of allocation, there was an excess of revenue over expense, was there not?

A. That is correct.

Q. And though it was relatively small your reallocation [fol. 1404] shows a net profit, does it not?

A. That is correct.

Mr. Kramer: For what, now?

Mr. Wilson: For the evening edition: the New Orleans States.

Q. Thereafter, the expenses mount rather rapidly——

A. Yes, sir.

Q. ——on your method of allocation, as they do on the Company's own method?

A. They are practically parallel.

Q. They parallel each other.

But they lead to a point where there is almost two hundred thousand dollars of expenses over gross revenues?

A. That is correct.

Q. And then they get a little closer together for 1949, do they not?

A. Yes.

Q. And stay just about the same: about a hundred thousand dollars apart, from 1949 to 1950.

A. That is correct.

Q. Mr. Houghton, as an economist, would you say that we have failed to get our revenues up fast enough to meet mounting expenses?

A. Yes, sir.

Q. That is a situation that is not uncommon in the business world, isn't it?

[fol. 1405] A. No, it is not uncommon.

Q. And many businesses have failed because of that, have they not?

A. Yes.

Q. We had a rather sudden jump in the year 1947, but we have been pulling it back together; haven't we?

A. Yes. That is the appearance of the lines.

Q. And if we are given a little time, even on your theory, we may be able to get that blue line above the red line, may we not?

A. That may be. I think it depends on the way the lines proceed from there on, of course.

Q. Well, naturally, it would make considerable difference as to how they go from there on, as to whether one will get above the other.

Tell me, Mr. Houghton: Do you think that, merely because a company goes through a period of three years that you have examined in which they are in the unfortunate position of finding that, upon a theory of allocation which you have developed, their expenses exceed their revenues, but you know that, at the beginning of the period, their revenues exceeded their expenses, do you think that three-year period is enough to form a judgment as to whether the company is operating its business at a loss?

A. Well, any year or any single year is enough to know whether a business is operating at a profit or loss.

Q. That is, you can tell for that year whether it is so operating?

[fol. 1406] A. Yes, sir.

Q. But can you draw any conclusions as to whether it would be good business judgment to shut the doors and let the bankruptcy referee take over? Or should we keep on trying to run our business and see if we can't make a profit out of it?

A. I think it is an excellent idea to run your business for a profit.

Q. And most people are in business for that purpose, aren't they?

A. That is correct.

Q. And most people don't give up the first time that they find themselves in the red, do they?

A. No, sir.

Q. And three years is hardly a sufficient study, is it, to determine whether or not anyone is intentionally running their business in the red, don't you think?

A. Well, it depends on the purpose which you are examining the records for, why you want to determine

whether it is running in the red. In connection with the theory of this case, it doesn't have to be over a long scope of time at all.

As a matter of fact, these are extremely prosperous times, in general, so that it is rather unusual to find a portion of a business operating at a loss, it seems to me.

Q. And that is true in the newspaper business, is it, Mr. Houghton?

[fol. 1407] A. Well, you mean general prosperity?

Q. The general prosperity you are talking about.

A. Well, I think the business is prosperous.

Q. Do you read Editor and Publisher?

A. Occasionally.

Q. Did you read the article in there in the last few weeks in which they said that during the last year expenses mounted, I think it was, 7.6, whereas revenues had only gone up 5-point something?

A. No. I didn't read that.

Q. You know that advertising rates over the country, generally, have not gone up in proportion to commodities, generally, don't you?

A. I haven't made a study of advertising rates.

Q. Well, you know that newsprint that was sold for $30 a ton about ten or fifteen years ago is now selling for $105 or $106 a ton, don't you?

A. I assume that is correct.

Q. You know what has happened to labor costs, don't you?

A. Yes, sir.

Q. You know that The Times Picayune Publishing Company is still selling the Times-Picayune for the same old nickel that it has been selling it for for years, don't you?

A. Yes, sir.

Q. And that is true, generally, in the newspaper business? Prices have only risen a very slight amount as compared to other prices, haven't they?

[fol. 1408] A. I don't know about that. I suppose that is true.

Q. Do you know of any price that has been increased a greater amount than the Sunday papers that have gone from 10 to 15 cents?

A. Oh, yes.

Q. Well, what paper prices have gone above that?

A. Didn't you say "commodities"?

A. No. I was asking about newspaper prices on newspapers that you buy at the newsstand.

A. No. I don't.

Q. So, some of them have had about a 3-1/3 per cent of gross increase on their circulation price for Sunday editions.

Do you know of any that have gone up over a penny or two for their daily editions?

A. No.

Q. Well, do you know, as a matter of fact, that the milline rate for advertising today is lower than it was in 1947?

A. I haven't studied the milline rates.

Q. And I am speaking, generally, throughout the country, not just in New Orleans.

Well, do you know what the milline rate is?

A. No, sir, I haven't followed the milline rates at all.

Q. Well, it isn't unusual, then, is it, Mr. Houghton?

I believe that you said you had made several business studies. It isn't unusual under prevailing conditions to [fol. 1409] find businesses that are not able to operate at a profit because their labor cost, their material costs and their other expenses have mounted faster than their revenues for the simple reason that they can't get higher prices for their products?

A. Yes, sir.

Q. But there is one thing that that chart clearly demonstrates, does it not, and that is that the revenues have, even as allocated to the States, climbed steadily, year after year, from '47 to date?

A. That is correct.

Q. And the only question is whether we allocated the expenses right or you allocated the expenses right?

A. That is right.

Q. But, even on your own theory, we had one very bad year and we have been improving ever since then?

A. No.

Q. Well, '47 or, rather, '48 was—There was a tremendous jump in '48.

A. You are speaking of the gross?

Q. Yes.

A. Oh, the gross has risen sharply, if that is what you meant. I thought you meant the net.

Q. What I am saying is that your gross expense, we indicated by the red line, as allocated by you, shows a very sharp increase in gross expense for the year 1948?

A. That is correct.

Q. That is correct. And, since that time, the revenues [fol. 1410] have been approaching closer and closer to the line indicating gross expense, but they haven't quite reached it yet.

A. Under your allocations, was that?

Q. Our allocations of revenues, as accepted by you.

A. I thought you meant——

Q. I asked you to use your own line, the red line there (indicating).

A. Yes, sir.

Q. So, we may catch you yet, may we not?

A. I don't understand the question.

Q. We may be able to get these revenues up so that we can put the blue string above the red string, like this (indicating).

A. That is possible.

Q. That is the trend, isn't it?

A. Well, I think your costs—I mean: The trend has been that your costs have risen faster than your revenues, and not the reverse.

I think that the very fact that your own net profits, the net profits have gone down sharply under any one of the systems of allocations, your own or the Government's, reflects, as I think you are trying to point out, the fact that costs have gone up more sharply than revenues.

I realized that before I made the study or, as I made the study. I realized that.

Q. But the trend since 1948 has been for the revenues to rise faster than the costs, hasn't it?

[fol. 1411] A. No. I don't think so, because your net profit has gone down, consistently, year after year, on any one of the standards, you see, the Company's allocations or the Government's; so, therefore, the cost must be rising

faster than the revenues. The lines are probably not plotted exactly right, and I think that may be the cause. I mean: The ribbons are not put on exactly right, probably; but I think that is the only thing that could be.

If your net profit is going down, either your revenues are going up more slowly than your costs or your costs are rising faster than your revenues, which is practically the same thing.

Q. But, as we have got it here, we were worse off in '48 than we are in '50. Isn't that true?

A. Not on a net basis. You are better off. You are making a better showing after expenses. In other words, your net profit was heading downward all through this four-year period.

The Court: In other words, the gap is wider instead of narrower?

A. That is right.

Which gap are you referring to? The gap between expenses and revenues?

The Court: The revenues in your allocation.

A. I can clarify it very simply. I have studied it. I studied it very carefully as I worked on this. I believe it is true that the expenses have gone up much faster than revenues, and that accounts for the fact that the profit or loss line, whichever you take, has been on the downgrade. [fol. 1412] If that is what you are trying to show, I think that is exactly right.

By Mr. Wilson:

Q. Perhaps, where we have made our error is that we have not correctly plotted the revenues for 1948.

Did you look and see what that figure is? Perhaps we can make this a little more accurate.

A. 2,000,000.2.

Q. 2 million 2?

A. Yes.

Q. That is where our——

A. We have bad draftsmen.

Q. Does that (indicating) look about right now?

Mr. Flurrry: I would like to ask you to check the 1950. That doesn't look right to me, according to your tabulation.

A. 1950 is 2 million 4.

By Mr. Wilson:

Q. I think that is the way it ought to look.

The Court: Suppose we take a recess, gentlemen.

(Short recess.)

The Court: Mr. Flurry and Mr. Wilson, will you come up here a moment, please.

(Bench conference.)

By Mr. Wilson:

Q. Mr. Houghton, would you examine the figures which [fol. 1413] you have prepared? I have forgotten which exhibit number, but the one that shows the net page circulation for the years '47 through '50.

A. Yes, sir.

The Court: What is the number of that exhibit?

A. Sir?

The Court: What is the number of the exhibit?

A. G-128.

By Mr. Wilson:

Q. Would you tell me what the net page circulation was for the New Orleans States, daily, in 1947?

A. 27 million.

Q. No, net page circulation?

A. Oh, you mean, per day?

Q. Yes, the average.

A. 88,688.

Q. And for 1948?

A. 91,465.

Q. For '49?

A. 94,086.

Q. And for 1950?

A. Averaged 95,946, roughly 96,000.

Q. So, the increase in circulation has been very slight, a rather slight but gradual increase from 1947 to 1950, has it not?

A. That is correct.

Q. Mr. Houghton, you introduced or, rather, you pre-
[fol. 1414] pared and the Government introduced certain charts which have been numbered Government's Exhibits 131, 134, 135, 136, 137, 138 and 139.

I will ask you to look over those exhibits and tell me whether they merely reflect the figures and computations which are contained in Government's Exhibits 127, 128, 129, 130, 132 and 133.

A. I believe so, yes, sir.

Q. So, the validity of those charts is no greater than the validity of whatever figures are contained in the exhibits which I have listed? Isn't that true?

A. Yes, sir.

Q. Mr. Houghton, in making the plot for me to show the revenues of the New Orleans States and the expenses of the States, as allocated by the Company, and the expenses, as allocated by you, you selected your method called circulation, did you not?

A. Yes, sir.

Q. And, as I understand your testimony, if you had used either man hours or published pages, you would have arrived at approximately the same results for your allocations? Isn't that true?

A. Yes. A little more loss would have occurred under the published pages, but the man hours and circulation are very close.

Q. Well, I would gather from that that one method is about as good as the other, is it not, for determining the allocations?

A. They seem to average out, yes, sir.

Q. And so we can take one or we can take the other, as we see fit?

[fol. 1415] A. Yes. I think so.

Q. And, of course, from time to time, in doing it, for special reasons which you have indicated in your testimony, you did vary from the method that is set forth at the top

of each column in Government's Exhibits 133-A, -B, -C and -D? Is that correct?

A. That is correct.

Q. Mr. Houghton, I am going to ask you to refer to Government's Exhibits 133-A, -B, -C and -D.

I want you to take your methods or formulae for allocating expenses and we will start with—We don't need "D". We can start with Government's Exhibit 133-C; and, for each of the items of expense that you have there, we will start with the composing room.

I would like you to look at the composing room and tell me which method gives you the lowest expense figure.

A. Under the circulation radio, the lowest, 217605.

Q. Well, to save your having to make a note of it, I have prepared it in advance for you. I wish, as you do that, you would just, for your own benefit, check the figures as I have put them down to see if they are correct, and then we will——

Now, look at the press room and tell me what the lowest figure, by your method, is.

A. 43,201.

Q. And for circulation or for stereotype room, what is the lowest figure?

A. 50,829.

[fol. 1416] Q. And is that the figure under circulation?

A. Oh, pardon me. 49184.

Q. For the photo-engraving room, what is the lowest figure?

A. 27048.

Q. For the mail room, what is the lowest figure?

A. 35131.

Q. For the maintenance room, what is the lowest figure?

A. 35603. Pardon me. 35603. That is correct.

Q. For advertising, what is the lowest figure?

A. 100,200.

Q. And for editorial, what is the lowest figure?

A. 319044.

Q. For office expense, which is the lowest figure?

A. 82926.

Q. For general expense, which is the lowest figure?

A. 98268.

Q. Is that under the allocation?

A. That was under the three allocations. That is correct.

Q. How about the allocation? Do you have another allocation of advertising space there?

A. Not under the three principal allocations I used, no, sir. I have one under the check, but not under the three main ones.

Q. All right. What figure did you get? Will you give me that figure again?

The Court: Is that office expense?

[fol. 1417] Mr. Wilson: For general expense.

A. 98268.

The Court: Mine shows 97604.

A. That is not one of the three. He asked me for one of the three main allocations which I carried through to determine the profit or loss.

By Mr. Wilson:

Q. All right. What figure did you have for office expense?

A. The lowest of the three?

Q. Yes.

A. 82,926.

Q. For circulation, which is the lowest figure?

A. 343923.

Q. For fixed charges, which is the lowest figure?

A. 66427. Fixed charges, you said?

Q. Yes. And I take it that all figures are the same for both paper and ink, are they not?

A. That is correct.

Q. And the figure for paper is what?

A. 673379.

Q. And for ink?

A. 10226, 10,226.

Q. Mr. Houghton, on office expense, you used as a check

against that, advertising space, and so indicated and used that figure in preparing Government's Exhibit 139-B, did you not?

[fol. 1418] A. That is correct.

Q. And I take it that in so using it on 139-B, you are indicating that that is a satisfactory method of allocating office expense, are you not?

A. Yes.

Q. And the same is true as to general expense, is it not?

A. Yes. It is one of the lower ones.

Q. And it would be equally satisfactory as a method of allocation?

A. Yes, sir.

Q. And that would be true, also, as to fixed charges, would it not?

A. Well, if you are looking for the lowest one, yes. That is right.

Q. But it would be as satisfactory as the others as a method of allocating expense, of fixed charges?

A. It would be a satisfactory method, yes.

Q. It would be as satisfactory?

A. Yes.

Q. Mr. Houghton, subject to further check by you at some later date, am I correct in saying that the total expenses allocated on your lowest basis as indicated in the exhibits, both the figures which you have prepared and the charts, that the total amount would be $2,100,492?

A. That is correct.

Q. And, subject to check by you, that would show a gross profit for that year of $75,663? Isn't that correct?

A. That is correct.

[fol. 1419] Q. Mr. Houghton, will you turn to Government's Exhibit 133-B and would you, for all of the items of expense, just check through there and read off for us the item of expense and the lowest figure, according to your allocation?

A. Composing room, 255632; press room, 50,184; circulation—I mean, stereotype room, 56,406; photo-engraving department, 29,749; maintenance——

Q. Mail room.

A. Pardon me. Mail room, 43,232; maintenance, 107264.

Q. Would you check that again, Mr. Houghton?

A. Pardon me?

Q. Would you check your maintenance again?

The Court: Wrong line; I think.

A. Pardon me. Do you want the very lowest one?

By Mr. Wilson:

Q. Yes, the very lowest one of all you computed.

A. 39495; advertising, 107264; editorial, 341279; office expense, 77714; general expense, 95697; circulation department, 368394; fixed charges, 63370; and paper, 692897; ink, 11263.

Q. Well now, subject to later check by you, am I correct that the expenses total for that year $2,232,573?

A. That is correct.

Q. And, subject to further check, would it be correct to say that, using that basis of allocation, we find a net profit of $9,574 for 1949?

A. Yes, sir.

[fol. 1420] Q. Now, will you do the same thing for me from Government's Exhibit 133-A?

A. Composing room, 274276; press room, 52,993; stereo, 59668; photo-engraving, 29533; mail room, 46648; maintenance, 52721; advertising, 109804; editorial, 365291; office, 85758; general, 102836; circulation, 422577; fixed charges, 75586; paper, 737246; ink, 12429.

Q. And, subject to further check by you, would it be correct to say that the expenses allocated on that basis total $2,427,366?

A. That is right.

Q. And for that year, that would indicate a net loss of $9,503, would it not?

A. 19,000.

Q. I mean, 19,000. I am sorry. I misspoke myself. $19,503. That is right, is it not, Mr. Houghton?

A. Yes.

Q. Now, Mr. Houghton, if the evidence in this case develops the fact that waste paper sales and claims amounted to $67,448.91 in the year 1950, we would agree, would we not,

that that should be charged back or at least some of that should be credited to the States revenue.

A. Yes, sir.

Q. The basis or the relationship, as I recall, of States to Times-Picayune paper was 17.6, was it not?

A. Yes.

Q. And the States was 17.6?

A. I think, 17.8.

[fol. 1421] Q. May be it is 8. I am not certain. I am saying it from memory.

The Court: Newsprint consumed?

A. Yes.

The Court: 17.6.

A. 17.6.

By Mr. Wilson:

Q. Well now, that would mean that we would get about one-fifth or a little le than one-fifth of that $67,000, would we not?

A. Yes, sir.

Q. So that would wipe out something over $10,000 of that loss, wouldn't it?

A. Have you figured it exactly?

Q. No. I am just doing it in my head here.

A. I think your figure is approximately right. About how much did you say?

Q. I said, about $10,000. That is what I said.

A. Yes, something like that.

Q. Sir?

A. I think that is approximately right.

The Court: Doesn't that depend upon whether this paper figure which is shown here is the net figure after crediting backsales? Do you know whether that is true or not?

A. It wasn't indicated on the records that I received. It was just carried as a final figure. There was no way for [fol. 1422] me to tell. Actually, I saw no figure on waste at the end-of-the-year adjustment, so the records were not consistently kept, if that was the case.

By Mr. Wilson:

Q. Well, assume that the evidence will show that waste paper sales were normally credited against the newsprint used by the Times-Picayune, morning and Sunday, and that the amount was $67,448.91. Then, it would be true that if we allocated it properly, we would take away about $10,000 of that loss, would we not?

A. Under those assumptions.

Q. Yes, on those assumptions; and we would still have a loss of around $9,000.

A. Yes, sir.

Q. Now, if we don't offset the 100 and what was it? 57,000? No, $157,199 of income that was received from cuts, mats and metals or at least under that heading, though I pointed out several places where other things were included—If we don't offset that against some other figures that you can find, such as reserves or other debits or depreciation, we have got $157,000 more of miscellaneous income to be distributed between the two papers, have we not?

A. Yes. I think you had better deduct the other items, though, if you are going to do that, because you have quite an additional loss if you take account for that depreciation.

Q. Well now, to what extent? Do you suppose that we would wear that building out a little bit less?

A. If you show me the table, I will tell you.

[fol. 1423] Q. It shows $180,000 for depreciation.

A. The net residual figure there, if you will look at it there, shows you how much. May I see it?

Q. Yes. You may see it. It shows a minus 83,000.

A. It shows that 83,000 more of expense should be added to this total you have come to.

Q. But 180,000 of that is depreciation, is it not?

A. Yes, sir.

Q. And you think we would wear out that building a little bit less if we could get rid of the States?

A. I don't know.

Q. I would like to know, because you are from the Government and we have problems with the Bureau of Internal Revenue from time to time and your opinion might help us.

The Court: I am sure it wouldn't be binding on the Bureau of Internal Revenue.

Mr. Wilson: I am sure it wouldn't, either, Your Honor.

If the Court please, I offer Defendant's Exhibit 19 in evidence.

The Court: It will be admitted.

(The document referred to, marked "D-19" for identification, was received in evidence.)

[fol. 1424] Q. We also had, did we not, Mr. Houghton, a total—well, we found that we had $45,417.50 in dividends.

A. How much was that?

Q. We had $45,417.50 in dividends for 1950, and $34,027.62 in interest in 1950, did we not, as income?

A. I don't know. I didn't consider dividends or interest as operating income.

Q. Well, but you testified to those facts for me either this morning or yesterday, I have forgotten which.

A. That may be, yes.

Q. Well, we will assume those are the facts that you did testify to. That would give us a total of about—well, we will take the low figure—give us a total of something in excess of $79,000.00 to distribute, would it not?

A. Yes, sir.

Q. That is assuming that my figures are the correct amounts?

A. Yes.

Q. Now, if we distribute that $79,000.00—and remember that we have already cut off $10,000.00—if we distribute the $79,000.00 on any basis that you suggest, we are going to wipe out the entire loss and come up with a profit, are we not?

A. Under your system of taking the lowest possible combination of these things, and if you include all the interest and dividends, I assume that is correct.

Q. Well, when you say "taking the lowest", I took the [fol. 1425] lowest of any that you suggested?

A. That is correct.

Q. So if we make all of the corrections and we assume that any one of your methods is acceptable for each item of expense, why we are going to come up with a figure which will show that we are in the black?

A. You didn't include that other adjustment in that

computation of—what was it—$80,000.00, $83,000.00 additional loss in the end of the year adjustments that you haven't taken into account.

Q. Well, then, suppose I give you back that $79,000.00 that we got out of interest and income. That will come near enough to wiping that $83,000.00 that we can call it square, can't we?

A. Well, if you want to take those standards and use them, why that is your method, not mine.

Q. Well, it isn't what I want to do. I mean I would prefer not to be in this at all, Mr. Houghton. But if we take that $79,000.00 you will let me offset it against the $83,000.00, won't you, just for our purposes? You are not going to quarrel with me over $3400.00 or $3500.00?

A. No, sir.

Q. So I am still in the red for about $9,000.00 for 1950, am I not?

A. Under your setup, yes.

Q. Well, let's assume, Mr. Houghton, that $38,000.00 of that is depreciation on the radio station. Don't you think [fol. 1426] we had better take that out?

A. No, because your expenses were earmarked specifically for radio, and if you didn't keep your records correctly that may be true, but they were specific expenses against the income on the radio portion, so I don't think it is fair to add that.

Q. You mean you don't think that even though $38,000.00 of the $108,000.00 may be depreciation on the radio station, we are still entitled to take it out?

A. No, not if I follow your records.

Q. Well, I am telling you though what that $180,000.00 includes. Mr. Houghton, I want you to assume that I am correct in stating that these are reports drawn from our books, and when you say whether they are correct or incorrect, I would like to know correct or incorrect for whom, Mr. Houghton? So far as we are concerned, they are correct, and you must remember we didn't prepare them for you.

The Court: Let me understand the situation about the depreciation. That is the figure of depreciation which he

said should be taken into consideration, include depreciation on the radio station?

Mr. Wilson: That is right. $38,000.00 of depreciation on the radio station.

The Court: The other expenses are allocated to the radio station specifically as radio station expenses?

A. Well, they didn't indicate on the books. They just carried radio revenue, radio expense, and radio net and radio——

The Court: Part of that depreciation is allocated to the [fol. 1427] radio station, and should be excluded, should it not, if you are going to divide the depreciation between the two newspapers?

A. I think it should.

By Mr. Wilson:

Q. Well, I am $38,000.00 ahead of you, but I am going to give you back $3,000.00 because I took it before, so that will make it—I am $35,000.00 out. If we take it at one of your ratios, they all run about thirty per cent, do they not, about 30-70, isn't that about the ratio?

A. That is right.

Q. Well, now, on that basis, we have wiped out the deficit, haven't we?

A. Well, now, taking the very lowest possible combination of figures you have.

Q. Well, if we take 30-70 we have wiped out the deficit?

A. 30-70 on what?

Q. I say, if we give thirty per cent of the $35,000.00 to the States and seventy per cent——

A. What are you speaking of now?

Q. Of the $35,000.00. I cut my $38,000.00 of radio depreciation. I cut it down to $35,000.00, and if I take thirty per cent of it and add it to the States, well, we will get a black figure, do we not, out of the loss column and into the profit side?

A. Yes, sir.

Q. So, on that basis, we have got a profit for 1947, 1948 and 1950, haven't we?

[fol. 1428] A. Yes, on that basis.

Q. On 1949 and '50. Now, we haven't given the States any of the Sunday revenue though, have we?

A. No.

Q. And we would have a very considerable profit if we added the net profit from the Sunday operation, a share of it, any proportionate share on the circulation basis?

A. Yes, sir.

Q. Mr. Houghton, I have placed on the easel here Defendant's Exhibit 6, which shows the equipment, that is, the total value of the equipment of the Times-Picayune Publishing Company. Have you made any effort to determine what part of that equipment could be dispensed with if we were not operating the States?

A. No, sir.

Q. Well, assume that I am right in saying that we have been operating three presses and we are putting in a fourth press over there of our regular presses, and in addition we have a colored press. In your study of the operations of The Times-Picayune Publishing Company, do you think that we would be able to dispense with any of our press equipment?

A. I wouldn't be in a position to say as to that.

Q. Well, you are aware, are you not, that we print a newspaper on Sunday of a circulation of, I believe, around 300,000 circulation?

A. Yes, sir.

Q. We have to have enough press equipment for that, do [fol. 1429] we not?

A. Yes, sir.

Q. We have a morning edition with a circulation of roughly 170,000, you know that, do you not?

A. Yes, sir.

Q. And you know that our evening edition has a circulation of roughly 100,000, do you not?

A. Yes, sir.

Q. Well, you know that the morning edition is printed at a different time from the time at which the evening edition is printed, do you not?

A. That is correct.

Q. And if we have enough presses to print the morning edition, we certainly can get the evening edition out on

those presses while they are idle—or when they would otherwise be idle, can we not?

A. Yes, sir.

Q. So the size of the morning edition determines how many presses we need, does it not?

A. I would think the maximum requirements of your operations would determine the number of presses you need, yes, sir.

Q. In other words, the morning edition determines how many presses?

A. Yes.

Q. And, as an economist, you would not be prepared to say that it is economically wise to leave those presses stand [fol. 1430] idle for half of the twenty-four — period, would you, if there is any way to utilize them?

A. No.

Q. And if we can utilize those presses so that we increase our gross revenues and at the same time pay for whatever additional labor and so forth, labor and supplies that are required to use them, why then all we have to determine is whether or not we are making enough to balance off the increased depreciation of those presses in order to determine whether or not it is a profitable operation, isn't that true?

A. Yes, sir.

Q. Sir?

A. Yes, sir.

Q. So we don't have to charge a third of the value of those presses or any reserve to buy presses, we don't have to charge that off to our new operation, do we, or any other portion of it?

A. Well, I think you should always allocate your depreciation according to the operations, not just arbitrarily one way or the other.

[fol. 1431] By Mr. Wilson:

Q. We will take the Composing room; do you know how many linotypes, Intertypes and Ludlow machines we have in the Composing room?

A. No, sir.

Q. Well, do you know the difference between the various machines?

A. I just have a slight idea of the difference. I have observed the linotype particularly, but the intricate features of them, I don't know.

Q. Well, if I suggest to you that there are thirty-five linotypes and Intertypes and two Ludlow machines there, wouldn't it be fair to say that the number of machines which are required in the Composing Room is governed by the number required to put out the morning edition?

A. I should think the number would be governed by your largest operation; yes.

Q. So, if we can get an operation that will utilize those machines during the half day or the half of the twenty-four hour period that they would otherwise be idle, it would be good business judgment to take on an additional operation and use those machines even though they would not pay off their own share of the costs. Isn't that correct?

A. Yes.

Q. Well, now, we have a building over there: supposing we had to get rid of the New Orleans States. What would [fol. 1432] we do about that building? Would we need less of it, do you think, to any substantial degree?

A. Well, that is an entirely different set of circumstances. I presume that you would still have to have that geared to your highest operations, if that is what you are leading to.

Q. And we could not very well——

A. I would think I would need to make a more careful study of the equipment set up.

Q. Well, perhaps I can help you.

Now, here is a graph ("D-13") or a chart showing the sixth floor of the Times-Picayune Publishing Company; and for your information the little green square here indicates that it is used for the Sunday edition only. The red shows that it is used for morning, afternoon and Sunday. Except for that very small space in green indicated on here, we would need all the rest of that, wouldn't we?

Mr. Kramer: For what?

Mr. Wilson: For the operation of The Times-Picayune Publishing Company even though we did not publish the New Orleans States.

A. Could I see the chart closer, please?

Q. Yes, sir. (Handing "D-13" to the witness.) That is the morning and afternoon editions?

A. As I say, it is very difficult to tell what you would need under a new setup.

Q. Well, Mr. Houghton, to shorten this matter some, I [fol. 1433] wish you would just glance through Defendant's Exhibits 7, 8, 9, 10, 11 and 12 and consider those along with Defendant's Exhibit 13.

A. (Examining exhibits.)

Q. Now, you have seen those exhibits before, have you not, and had an opportunity to study them, Mr. Houghton?

A. Yes, sir.

Q. And you were furnished the supporting data on which they were made, were you not?

A. Yes, sir.

Q. You have had an opportunity to check that and have returned it to The Publishing Company, have you not?

A. That is correct.

Q. Mr. Houghton, after studying the charts and the supporting data, are you prepared to say that we could dispense with any part of the building which we now use at 601 North Street, if The Times-Picayune Publishing Company should continue its present operations except that it would stop publishing the New Orleans States?

A. No, sir.

Q. Mr. Houghton, you have seen Defendant's Exhibit 5 previously, have you not?

A. Yes, sir.

Q. You had an opportunity to study it and the supporting data from which it was prepared, did you not?

A. Yes, sir.

Q. That exhibit purports to show the total employees [fol. 1434] of The Times-Picayune Publishing Company and how they are engaged. From your study of that exhibit, how many of the 953 employees do you think we could dispense with if we ceased to publish the New Orleans States?

A. I have not made a study of the problem of what your labor force or your equipment or any other factors would be if you were operating just the Times-Picayune morning and Sunday, so I am not in position to answer that question.

Mr. Wilson: Now, if the Court please, I have completed my cross-examination of Mr. Houghton on the accounting. We had reserved some cross-examination in relation to the advertising. There was an exhibit or two that had to be examined before Mr. Phelps could cross-examine on it, and I defer to the Government on whether they prefer——

Mr. Kramer: We prefer for you to go ahead and finish that up.

Mr. Wilson: You would like for us to do that before?

Mr. Kramer: Yes.

Cross-examination.

By Mr. Phelps:

Q. Mr. Houghton, have you had an opportunity to examine the exhibits marked "D-16" and "D-17"?

A. Yes, sir.

Q. I think the originals were turned over to you.

Mr. Kramer: Do you have them up there? That is the Sunday chart.

[fol. 1435] Mr. Phelps: Do you have them, Your Honor? It is the Sunday chart and the supporting document.

The Court: Yes.

A. Yes, sir, here it is.

By Mr. Phelps:

Q. You said you have had an opportunity to examine these?

A. Yes, sir, and the figures are correct.

Q. I note a correction, if the Court please; they are marked "D-15" and "D-16". I would like to strike from the record my reference to "16" and "17".

You have examined Defendant's Exhibit "D-15" and "D-16"?

A. Yes, sir.

Q. Did you find them to be correct and accurate in all respects?

A. Yes, sir.

Mr. Phelps: We offer Defendant's 15 and 16 in evidence.

Mr. Kramer: Objection, Your Honor. I would like to state the ground. If this chart is offered on defendants' case, we will have no objection to it. I would like to remind the Court that that chart relates to advertising and not to finances. The Government has introduced no evidence whatever as to the effect of the unit rate on the Sunday circulation or lineage of either paper for the simple reason that there cannot be any effect because we don't charge any forced combination on Sunday. We charge, very carefully, in 23(f), the effect that the unit rate put into effect [fol. 1436] by defendants on their morning and evening papers, and there is not a word in there, or contention, then or now, that there is a forced combination on Sunday. If this purpose of this chart, however, is to write out charting methods and to show what charts can show, we think it is quite a legitimate method of cross-examination. We don't think any lineage figures as to Sunday can possibly be relevant.

Mr. Phelps: If the Court please, I have two observations on that. In the first place, Mr. Kramer is already on record as saying that if his witness found the figures to be accurate that he would have no objection to this chart going into evidence.

Mr. Kramer: That is correct, Your Honor; I have changed my mind.

Mr. Phelps: In the second place, at the time that the corresponding exhibit as to the afternoon field was introduced, I made an objection to it, stating that I thought it had no relevancy. Your Honor ruled that the objections would go to the weight of that exhibit. This exhibit is directly designed to show and, in my opinion, shows very clearly that the corresponding Government Exhibit is entitled as to no weight whatsoever, and, in my opinion, this is about as important as any exhibit in this case, for the reason that it shows the utter fallacy of the Government's whole position as to the term "share of the market". There

is no such thing as a share of the market. This exhibit shows it clearly and the Government's whole position is predicated on that which the corresponding exhibit is designed to show. I believe it is clearly admissible, Your [fol. 1437] Honor. I would like to reassert my offer of it.

Mr. Kramer: Well, again, if it will shorten the trial and get the issues narrowed down, we concede that charts shows vigorous competition in the Sunday field. It is just that we don't charge the use of unit rate to effect any restraint of trade in the Sunday field. Therefore, I can't see what the purpose of it is unless the offer is confined to showing charting methods.

If you are offering it solely to show that that is a wrong way of charting anything, then I have no objection to having the document go in.

The Court: I find it very difficult to disassociate it in my own mind the Sunday edition and the week day edition, particularly where you have a situation where your competitor has discontinued or claims to have discontinued one week day edition and has gone into the Sunday field, with the result that certainly some advertising which had previously been carried in the week day issues have been transferred to the Sunday edition. How can you make allowance for that unless you go into the Sunday issue?

Mr. Kramer: Your Honor, I would suggest that from the time that happened forward, the defendants in their case, if they think the figures help them, can introduce the Sunday Item figures, but that would be 1951. I want to make it clear my whole argument now is confined to the propriety of doing this on the Government's case. I think it is proper cross-examination to introduce a chart like that for the purpose of showing what charting methods can produce, [fol. 1438] but if it is being introduced to show what the effect is on the Sunday field, I should suppose the proper time is during their case. Maybe I am being highly technical; I don't know. I did want to use this again, quite frankly, to renew our position that we make no allegation there is a forced combination rate in the Sunday field or that the forced combination rate had any effect on that advertising.

23 (f) very carefully confines it to morning and evening.

Mr. Phelps: If the Court please, I believe that the pur-

pose of the chart is directly in line with this witness' testimony on direct examination where he referred to the evening field as being a separate field, to there being such a thing as a "share of the market", and this chart proves to my mind conclusively that you cannot separate an evening field, or a morning field, or a Sunday field, and the chart shows that although on that type of chart, and on a percentage of a market basis, the Times-Picayune lost as much as forty per cent of the field, that it, in fact, had an overall gain of thirty per cent of the advertising.

The Court: It seems to me it goes beyond that. It is hardly a question of the afternoon field or a morning field, but a question of whether there are separate markets.

Mr. Phelps: I think that is entirely correct.

The Court: Afternoon market, Sunday market, morning market. Aren't all of these appealing to the same people in the same market?

Mr. Kramer: Eventually we will have to give consideration to that, in briefing an argument. My position, again, [fol. 1439] is since we haven't introduced any evidence as to Sunday, I don't see how you rebut anything by introducing evidence as to Sunday. I am not talking about Sunday lineage; I am talking about the financial end of it.

Mr. Phelps: I can understand Mr. Kramer's concern, if Your Honor please.

Mr. Kramer: I don't know what that means, Your Honor.

The Court: Let us get to the question of this American Magazine. When did the Item commence the Sunday paper?

Mr. Kramer: March 5, 1950, the record shows, Your Honor.

The Court: As of that date they started issuing this American Magazine?

Mr. Kramer: They neither publish nor issue it; they buy it already published and distribute it as part of the Sunday paper.

The Court: They distribute it along with their paper. It becomes a component part of their newspaper?

Mr. Kramer: Yes, Your Honor, and it has written at the top "Item".

The Court: There has been considerable testimony here

by advertisers, since they had space in the American Weekly, that they did not need space in the daily Item.

Mr. Kramer: Well, I don't like the word "considerable", but other than that, I accept Your Honor's statement. I agree with it.

The Court: Very well.

Mr. Kramer: Again, my position is that you cannot [fol. 1440] erase the ill effects, if such there be, from a forced combination rate in the morning and the evening field by not having one in the Sunday field.

I don't know if it would help Your Honor decide on this question I have raised, but perhaps if I were to ask Mr. Houghton one question about that chart, it might; although, I defer to Your Honor's judgment on that.

The Court: I think the chart should be admitted. I overrule the objection.

(The documents marked "D-15" and "D-16" for identification, were received in evidence.)

[fol. 1441]. By Mr. Phelps:

Q. Mr. Houghton, referring to Government's Exhibit 109-B and 110-B, do you know the number of accounts in which the Item participated, six day, in 1949?

Mr. Kramer: Just a minute. We will get the charts. These are account charts, aren't they?

(Documents handed to witness.)

Mr. Phelps: Would you read the question?

(The Reporter read the last question.)

A. (Examining Documents.) There are ninety-eight in the group of advertisers that had selected one evening newspaper to advertise in: The General Display Advertising.

By Mr. Phelps:

Q. You can just give the numbers, if you don't mind. What I am interested in is the total.

A. Ninety-eight, adding the various groups every time the Item appears.

Q. That is correct.

A. Ninety-nine in the first group. That is One Morning and One Evening. Three hundred eleven in the one morning and two evening; ninety-eight in the next group and then that is One Evening; and nineteen in the final group, which is Two Evening.

Q. According to my figures, those total 527 accounts in which the Item participated in 1949.

Would that be correct?

[fol. 1442] Mr. Kramer: That is what my addition shows. That will shorten it.

A. Yes, sir.

By Mr. Phelps:

Q. Coming to 1950, would you say how many accounts the Item participated in in that year?

According to my information, it is 23, 368, 100, and 7. Is that correct?

A. Yes.

Q. That would be a total of 498, would it not?

Mr. Kramer: That is what my addition shows, Your Honor.

A. Yes, sir.

By Mr. Phelps:

Q. So that the Item appears to have lost 29 accounts in 1950 over 1949, doesn't it?

Mr. Kramer: Objection. The chart does not purport to show the number of accounts that were the same and those which were different. They may have lost 500 and gained——

The Court: You are talking about a net loss of so many accounts. Is that correct?

Mr. Kramer: I didn't understand it.

Mr. Phelps: That is correct, Your Honor.

By Mr. Phelps:

Q. In other words, the Item carried twenty-nine fewer [fol. 1443] accounts according to this chart in 1950 than in 1949, didn't it?

A. If you think that is a fair comparison, yes. Actually, the basis is in terms of altogether different accounts; that is, there were so many accounts in various categories. The turnover is so great in advertising accounts that I don't know that you could trace numbers from one year to another. These are really pattern charts, you see.

Q. I see. Actually, there were eighty fewer accounts in 1950 than in 1949, weren't there?

A. Yes.

Q. But the Item participated in a higher percentage of the accounts in 1950 than it did in 1949, didn't it?

A. I assume you have computed it, and it is correct.

Q. Well, I want your statement that it is correct.

Mr. Kramer: What is it again?

A. Could I have a piece of paper, please.

By Mr. Phelps:

Q. Surely. You can have my computations, if they will help you any. (Handing document to witness.)

A. Which ones are these?

Q. Those are my computations and some division figures.

A. Yes; that is correct.

Q. So that the Item participated in 51 per cent of the accounts in 1949, but in 1950 it participated in 52 per cent of the accounts. Is that correct?

A. Correct.

[fol. 1444] Q. And, of course, your charts do not indicate lineage in any degree, do they?

A. No, sir.

Mr. Kramer: What charts?

Mr. Phelps: 109 and 110.

By Mr. Phelps:

Q. And these charts, 109 and 110, don't take into consideration Automotive or Financial, do they?

A. That is correct.

Q. I believe you testified that you talked to Mr. Leeming sometime ago about including those and decided that for some reason it was not a good idea.

Would you restate the reason why you didn't originally include Automotive and Financial?

A. In reference to these charts?

Q. Yes.

A. No, that is not correct. I did not talk to him with reference to these charts, as to the exclusion or inclusion of Automotive.

Q. In general, you did talk to him about the problem of including them in all your charts. Is that correct?

A. Not in reference to this one; just in reference to the other ones.

Q. In reference, generally, on how to treat General Advertising?

A. That is right.

[fol. 1445] Q. What was the reason why you did not include them?

A. In this chart?

Q. In any of the charts on General?

A. This chart had no interest in that.

Q. It would have had a bearing on it, wouldn't it?

A. Well, this chart was confined—There was only one purpose: to show it for General Display Advertising.

Q. I understand that, but the unit rate, I think we can say, if it affected the advertising at all, it affected some Automotive and some Financial, didn't it?

A. Yes.

Q. So that you could have included that in this study, couldn't you?

A. Oh, yes. I could have.

Q. But you have nothing in these studies on 109 or 110 dealing with Automotive or Financial accounts?

A. That is correct.

Q. I ask you why you didn't go into Automotive and Financial?

Mr. Kramer: In these charts?

Mr. Phelps: In any of the charts.

A. I was not instructed to.

By Mr. Phelps:

Q. Didn't you tell me you talked to Mr. Leeming and you found it impractical to do it?

A. No, sir, not in reference to these charts.

[fol. 1446] Q. In reference to any of your advertising charts?

A. No, sir. In reference to the General Display Trend Charts, we concluded, after talking with Mr. Leeming, that it was impractical for me to go through all the accounts and try to determine which were retail and which were General.

Q. And yet within twenty-four hours after the defense brought up the point, you had some figures from Mr. Lemming, didn't you?

A. I think some figures were produced, yes.

Q. Mr. Leeming: I believe you heard him testify, didn't you?

A. Yes, sir.

Q. And you heard him say he couldn't analyze the Times-Picayune's accounts, didn't you?

A. Yes, sir.

Q. As a matter of fact, hasn't the Government received the most complete cooperation from the Times-Picayune in furnishing any and every bit of information requested?

A. Yes, sir.

Mr. Kramer: Objection, Your Honor. The objection is that he has not asked the witness whether or not he, the witness, has received cooperation. The witness can't speak for the Government counsel.

Mr. Phelps: Let the witness speak for himself.

Mr. Kramer: I certainly don't want the witness to be asked about cooperation between counsel.

Mr. Phelps: Let him testify as to what he can testify to.

[fol. 1447] The Court: He knows. I don't see any objection to his testifying.

A. I, personally, have.

By Mr. Phelps:

Q. You have gotten every bit of information you wanted?

A. I didn't receive it. I have gotten the cooperation.

There was one item of information you did not have available, but I did have cooperation.

Q. In so far as we could cooperate with you, we did?

A. Yes, sir.

Q. And is there any reason to believe you could not have gotten the information from us if you had wanted it?

A. I don't know whether there is any reason to believe or not. I assume we could have gotten it, yes, sir.

Mr. Phelps: We have no further cross examination, Your Honor.

Mr. Kramer: I think we would like to finish the redirect on Mr. Phelps' matter, first.

[fol. 1448] Redirect examination.

By Mr. Kramer:

Q. I hand you Defendant's Exhibit 15, Mr. Houghton, and ask you to give me your interpretation of that chart.

A. This chart indicates that the Sunday Times-Picayune was the only paper carrying General Display Advertising lineage in New Orleans during 1949; that following the entry of the Item into the field in 1950, its proportion of the market declined—the Times-Picayune-New Orleans States' proportion of the market of General Display Advertising dropped from one hundred per cent to approximately sixty-five per cent, and after that period declined further. On the other hand, the Item had risen to a point of thirty-five per cent of the total, and subsequently rose to forty-two and a half per cent.

The Court: That doesn't mean the Picayune carried less than it had before?

A. No, sir; only percentage of the market: lineage. These are only products of the lineage.

The Court: Actual lineage in the Picayune might have increased, and represented only——

A. One may increase faster than the other.

By Mr. Kramer:

Q. Mr. Houghton, do you think that chart fairly represents the proportion of the Sunday General Advertising

General Newspaper Advertising lineage of the market held by the Times-Picayune and by the Item for the period of time covered?

[fol. 1449] A. Yes, sir.

Q. Thank you.

Mr. Houghton, would you please indicate to the Court the reason why you did not prepare information respecting the Automotive and Financial Advertising accounts of the Times-Picayune, the States, and the Item?

A. Because I did not feel that I knew the accounts well enough, as to whether they were sold under Retail or National bases to select them, and decide which ones to include and to exclude. The only way I could get an indication of the trend was to confine my study to the General Display Advertising category as carried by Media Records.

Q. Do you have any reason whatsoever to believe that if you included Automotive and Financial accounts which were General, and excluded those which were Retail Display, that it would affect in any pertinent way the outcome of your lineage studies of General Advertising in the New Orleans market for the period covered?

A. The rough calculations that I did, with the assistance of Mr. Leeming, with which I did not feel like I was equipped to carry through with each account, suggested to me that the trends would be very similar to those shown by the General Display chart, and that there was a sharp rise in advertising carried by the States following the introduction of the forced combination in February, 1950, and a declining trend for the Item.

Q. Two more questions, Mr. Houghton:

I hand you Government Exhibit 109-A and 110-A, and I [fol. 1450] will ask you to tell me if they indicate in any way either the percentage of the market had by each of the newspapers shown on them, or the absolute dollar volume or lineage of the market had by each newspaper published in New Orleans?

A. No, they don't refer to that particular phase of the subject.

Q. Would you explain to the Court the reason why you prepared those two charts?

A. These charts were prepared under my supervision for the purpose of showing the effect one might see on both the advertisers on the one hand and the newspapers on the other hand, of the introduction of forced combinations in terms of their charts.

For example, in 1949, as one of the charts shows, thirty-three per cent of all the advertising accounts elected to advertise in one morning and one evening newspaper in New Orleans. Following the introduction of the forced combination, those same accounts, had they elected to advertise in New Orleans, would have had to advertise—and elected also to be in one morning and one evening paper—had only one choice: namely, to advertise in the Times-Picayune and States.

An additional 22.7 per cent of the accounts in 1949 had elected to advertise in one morning paper. Had they preferred to elect to take a morning paper in New Orleans for General Display Advertising, following introduction of the forced combination, to continue in the morning, they would have had to take in addition advertising in the States under the forced combination.

Mr. Kramer: If the Court please, the Government, so [fol. 1451] far as it now knows, has two or one, witnesses left. The one witness has come from Washington under what must have been rather extraordinary conditions and apparently has not arrived yet, and is rather anxious to return so as to be back at work on Monday. I am sure he would stay if the Court——.

The Court: In your absence, I discussed this matter with Mr. Flurry and Mr. Wilson and Mr. Phelps, and I told them that we would sit tomorrow.

Mr. Kramer: Good. Will we sit just for this witness or may we complete any redirect examination of Mr. Houghton on financing that we would have?

The Court: I don't know how long your witness from Washington will take. Didn't you have a witness from Chicago?

Mr. Kramer: From New York. We have dropped him; we don't think it is necessary.

Mr. Flurry: I would estimate not more than thirty minutes.

Mr. Kramer: Direct examination will not exceed thirty minutes of the Washington witness. The redirect of Mr. Houghton might take as long as an hour, but I doubt it.

The Court: Well, do you suggest that we interrupt this examination tomorrow morning and at least not resume this examination until after you heard the other witness?

Mr. Kramer: Well, if Your Honor is going to sit, let us say, until 12:00 Noon, tomorrow, I am sure we can finish it up.

[fol. 1452] The Court: I had indicated that I would sit until around 1:00 o'clock.

Mr. Kramer: Then, there is no problem. Government expects to rest by tomorrow.

The Court: Of course, I have an idea the defendants may want to question Mr. Houghton some more after we have had some questions on redirect.

Mr. Phelps: I have about two or three more questions I want to ask of Mr. Houghton right now, and finish up the advertising phase of it.

Mr. Kramer: Well, all right. Supposing everyone talks it over among ourselves and tomorrow morning we will confer with Your Honor.

The Court: We will start at the usual time, tomorrow morning, and my idea was to work until about 1:00 o'clock.

Mr. Kramer: Fine, Your Honor.

Mr. Phelps: I will only be two or three minutes.

Recross-examination.

By Mr. Phelps:

Q. Mr. Houghton, referring to your purpose in producing Charts 109-A and 110-A, the real reason you did that was because somebody told you to do it, wasn't it?

A. Yes, sir.

Q. And as a matter of fact those charts don't show anything more than what we would know by hypothesis, do [fol. 1453] they? Namely, that the category "T-P Item" would be eliminated; that the categories "T-P only" and

"States only" would be eliminated and that the categories "Item and States" would be eliminated, isn't that the correct answer?

A. It shows a little more than that. You asked me if it showed no more than that.

Q. I did, indeed. Suppose you tell us.

A. It shows more.

Q. Suppose you answer the question, then.

A. It shows in addition, fifty-seven per cent of the market in terms of the number of accounts, would be restrained.

Q. Suppose you explain that to us.

A. Well, they can't exercise free choice any more; they can't have the Times-Picayune only; they can't have the Times-Picayune and Item only; and they can't have the Times-Picayune and States.

Q. You understand that you are testifying on the very matter that Judge Christenberry is supposed to decide?

A. That is my interpretation.

Q. It is your opinion?

A. It is my opinion.

Q. That these charts themselves show a restraint?

A. That is my opinion.

Q. Even though in point of fact, from these Charts, the Item could have tripled their lineage?

A. Yes, sir.

The Court: What percentage were you referring to?

[fol. 1454] A. Those who selected one morning and one evening paper, and those who had selected one morning paper; that is, in terms of their selection in 1949. They could not have a free selection.

The Court: The ones that selected one morning and one evening paper could still get one morning and one evening?

A. Yes, but they had no choice; that is, between the Item and the States.

The Court: You are taking the entire 33.4?

A. Yes, sir. In addition to that, those that had been in the Item could no longer be in the Item if they wanted one morning and one evening; they would have to switch to the States.

By Mr. Phelps:

Q. This is your opinion that there are people who want one morning and one evening. Is that correct?

A. Yes, sir. I am assuming that, from the charts, that thirty-three per cent of them had selected.

Q. You are the same Mr. Houghton that told us you didn't know whether you needed a daily paper to support a Sunday paper. Isn't that right?

A. Yes, sir.

[fol. 1455] The Court: Let's get over to this, if you don't mind the inter-uption. You say you considered the 33.4 did not have a free choice?

A. That is correct.

The Court: That all those who took the T. P. and Item, and the T. P.-States—What did you add to those?

A. The twenty-seven, only; that is, the Times-Picayune, only. That is a different level of choice. If they wanted to stay in the Times-Picayune, morning, they would have to take the States in addition.

The Court: I see. Though there were 5.8 apparently in 1950 who did take the T. P., only. You would have to deduct that 5.8 from the 22.7.

A. That is partly the period covered. The forced combination didn't come in until February and this is not a completely clear picture. The top part of the first bar on the 1950 chart also reflects that.

By Mr. Phelps:

Q. In point of fact—Pardon me, Your Honor. Have you finished?

The Court: Yes.

By Mr. Phelps:

Q. In point of fact, these charts don't show there isn't any single advertiser who isn't still free to take the Item, is there?

A. If he wants to take the Item, only.

Q. Suppose he wants to take the Item, Times-Picayune and States; he is still free to take it.

[fol. 1456] Q. He has that choice.

Q. So, these charts don't demonstrate one single advertiser who can't take the Item?

A. What is true, but it also shows that I was discussing: If he wants the Times-Picayune, that is the premise.

Q. As a matter of fact, an account may run, as far as these charts show, and an account might run 100 lines in the Times-Picayune, a hundred lines in the States and 10,000 lines in the Item; and, in so far as this chart is concerned, that account receives the same percentage space as any other account, doesn't it?

A. That is correct.

Q. And the same is true as to advertising campaigns:

(Strike that.)

Now, referring to Defendant Exhibit 15, although the Times-Picayune-New Orleans States, Sunday, showed a decline of about 35 per cent in your theory of field, or "share of the market," in point of fact, there wasn't a single month in 1950 when the Times-Picayune-New Orleans States did not have substantially more advertising than the corresponding month in 1949. Isn't that true?

A. That is the Times-Picayune?

Q. That is correct: The Sunday. The Times-Picayune-New Orleans States.

A. That is correct.

Q. And in point of fact, in 1950, there was more than double the volume of lineage used in Sunday publication than in any of the preceding three years. Isn't that true?

[fol. 1457] A. That is correct.

Q. What is the amount of lineage increase between '46 and '47?

A. For the total Sunday, it rose from 68,000 and 93,000.

Q. What about the following year?

A. From 93,000 to 95,000.

Q. And the following year?

A. To 97,000.

Q. And the following year?

A. To 202,000.

Q. So that the field increased from 97,000 to 202,000, didn't it?

A. From 1949 to '50.

Q. From '49 to '50?

A. Yes.

Q. And you say you did not attempt to break down Automotive and Financial because you didn't know how to do it?

A. I didn't feel that I knew each individual account or could judge without some expert assistance.

Q. Did your assistant, Mr. Cooke Coen, know how to do it?

A. No, sir.

Q. Did you ask his advice?

A. No, sir.

Q. You did not make any effort to find out?

The Court: Someone would have to do that who was [fol. 1458] familiar with the individual accounts?

A. Yes, sir.

By Mr. Phelps:

Q. You made no effort to find out from the Times-Picayune what the accounts were?

A. No, sir.

Q. You say you thought the trend would be about the same on Automotive and Financial?

A. If my impression was that if the local were eliminated from the Automotive and Financial—I mean, the General were taken out of the Automotive and Financial and added to the General Display and the Local taken out of the General Display, the trends would be practically the same.

Q. Well, you didn't study that very carefully, then, did you?

A. Just a rough check.

Q. In point of fact, when you come up with this estimate from Mr. Leeming, you find out you were a good bit off, didn't you?

Mr. Kramer: I object, Your Honor.

Mr. Phelps: It is a perfectly proper question, I think.

Mr. Kramer: May we show the witness the estimates by Mr. Leeming?

The Court: If he knows.

By Mr. Phelps:

Q. Do you know?

A. I didn't study the estimates.

[fol. 1459] Q. Do you know what it shows?

A. I noticed it was individual accounts, but I didn't pursue the matter further.

Q. You heard Mr. Leeming on the witness stand he had made a slight error of 5300 lines, didn't you?

A. I didn't consider it an error. There was a difference of opinion. His method was different from yours, as I understand it.

Q. He admitted he had taken accounts in fact retail and had not deducted them, didn't he?

A. Well, he had used a basic standard of definition which was different from yours. I think that was the reason for it. He classified retail on a different basis than you do, apparently.

Q. How many other of these advertising charts did you prepare, because somebody told you to prepare them?

A. Well, I think that is the lot of them.

Q. You think all of them were prepared under somebody else's direction?

A. Pardon me?

Q. All of the charts on advertising were prepared on somebody else's direction?

A. All of which charts?

Q. All of your charts, 106 to 110?

A. They were all prepared, all the charts I presented were prepared under my direction.

Q. I understood you to say 109 and 110 were prepared [fol. 1460] under your direction.

The Court: No. He said everything he did was prepared because somebody asked him to do it.

By Mr. Phelps:

Q. You prepared them because somebody told you to?

A. Yes, sir.

Q. All you have done is to carry out your instructions?

A. That is correct.

Mr. Phelps: We have no further recross examination.

Mr. Kramer: On that phase.
May we adjourn now, Your Honor.
The Court: I should think so.
We will adjourn until tomorrow morning at 10:00 o'clock.

(Whereupon, at 5:15 o'clock, p.m., the trial was adjourned until Saturday, May 12, 1950.)

[fol. 1461] PROCEEDINGS OF MAY 12, 1951

Mr. Kramer: If the Court please, late last night when I returned to my office in the Delta Building, Mr. Leeming came over to see me and said that he had been considering his testimony and that he decided he had made mistakes in that testimony and asked me what he should do about it.

I advised him that, subject to the Court's permission, the only thing he could do about it was to retake the stand and describe what happened.

With Your Honor's permission, therefore, I would like to recall Mr. Leeming.

The Court: Very well.

FRANK LEEMING, was recalled and testified further as follows:

Redirect examination.

By Mr. Kramer:

Q. You are the same Frank Leeming who testified in this trial on Thursday last?

A. I am.

Q. Did you check the testimony and statistical material which you gave earlier this week after you left the witness stand?

A. Yes. I did.

Q. After you made that check, what mistakes, if any, did you discover?

A. I found there had been some clerical errors in the [fol. 1462] tabulations and also we reconsidered the lineage that was omitted from the original that was retail, but

had not used enough space to be considered retail. I felt that those should be added to the total.

Q. In other words, you decided that when His Honor asked if an account wasn't retail or national, irrespective of the open rate it carried, and your answer was "no," that it should have been "yes".

Is that it?

A. That is correct.

Q. Will you describe very briefly, Mr. Leeming, how you account for having made the clerical errors as distinguished from this other classification problem which you have just discussed?

A. Well, there were certain accounts that we had asked the contract clerk at the office to check; and, apparently, they were not checked and I was handed the list and assumed that they had been checked and so testified.

Q. I now hand you for identification Government Exhibit 125-A and I will ask you to tell me what that purports to be, if you know.

(Document handed to the witness.)

A. This is a revise of the sheet we discussed on Thursday, with the corrected figures on the deductions of retail advertising from what Media Records measures as Automotive and Financial for the years '49 and '50.

Q. Were these figures prepared from certain tabulations which I hold in my hand here? That is to say, were the figures on 125-A prepared from Media Records and from the tabulation sheets that I have in my hand?

[fol. 1463] A. Yes. Those are the work sheets from which these figures were taken.

Mr. Kramer: Let the record show that I have handed a copy of the work sheet to counsel for the Defendants.

By Mr. Kramer:

Q. Did you personally check these figures and accounts this time?

A. Yes. I did.

Q. And when did you do this?

A. Yesterday afternoon and particularly last night.

Q. When did you complete your work?
A. About twelve o'clock last night.

Mr. Kramer: Excuse me a moment, Your Honor. No further direct examination at this time.

Recross examination.

By Mr. Phelps:

Q. Mr. Leeming, may I say that on behalf of the Defendants, I appreciate your frankness in correcting an error which might otherwise have been prejudicial to our case.

As I understand Exhibit G-125-A, it indicates that the Item had a gain on General Advertising within the Automotive and Financial classifications of 17,060 lines in 1950 over 1949.

Is that correct?

A. Well, I haven't made that addition, Mr. Phelps.

[fol. 1464] Q. Would you mind doing that? I have some figures here, if they will be helpful to you.

(Document handed to the witness.)

A. I would say those are correct, sir, yes.

Mr. Kramer: May I see what you handed him?
Mr. Phelps: Surely.

(Document handed to Mr. Kramer.)

By Mr. Phelps:

Q. Mr. Leeming, that would show, then——

(Strike that.)

Exhibit G-125-A would indicate a gain, then, of 17,060 lines on General Advertising within the classifications Automotive and Financial for the year 1950 over 1949. Is that correct?

A. That is right.

Q. And that gain in '50 over '49 on Automotive and Financial exceeds the loss shown in the classification General in Media Records for the year '50 as against '49, doesn't it?

A. I will have to check Media Records to be sure of that.

Q. Surely, and possibly counsel will stipulate that it was 16,500-something lines. One of the exhibits shows it.

Mr. Kramer: As soon as I examine it, if it is correct, I will.

A. Roughly, 17,000 lines.

Q. There were 16,500, approximately, weren't there?

A. Yes.

[fol. 1465] Q. Is that correct?

A. Yes, sir.

Q. So that, with respect to General Advertising affected by the unit rate, the Item, six-day, carried more lines of such advertising in 1950 than it did in 1949? Isn't that correct?

A. Total General classification.

Q. Total General, including that portion of Automotive and Financial, which is General.

A. That would be right, sir, yes.

Q. Do you happen to know if 1950 wasn't the best year on six-day General advertising that the Item has ever had in its history?

A. Well, I couldn't say to that, because I haven't checked, Mr. Phelps.

Mr. Phelps: No further questions, if the Court please.

Mr. Kramer: I have nothing further.

(Witness excused.)

Mr. Kramer: I offer G-125-A in evidence.

The Court: It will be admitted.

(The document referred to was marked "G-125-A" for identification and was received in evidence.)

RECORD

PP. 966-1041

[fol. 1466] GORDON M. ANDERSON, a witness called by and on behalf of the Government, after being sworn, was examined and testified as follows:

Voir dire examination.

By Mr. Flurry:

Q. Would you please state your full name and address?

A. Gordon M. Anderson, 180 Fleetwood Terrace, Silver Springs, Maryland.

Q. Where were you born, Mr. Anderson?

A. Merrill, Wisconsin.

Q. By whom are you employed?

A. At present?

Q. Yes.

A. I am presently employed by the Excess Profits Tax Counsel, Bureau of Internal Revenue, Washington, D. C.

Q. Have you studied accounting?

A. Yes, I have.

Q. Where did you study accounting?

A. I studied accounting in the Training Division of the Bureau of Internal Revenue, and I have also taken courses in accounting from the International Accountants Society in Chicago. I also have taken accounting review courses in Marquette University in Milwaukee.

Q. Did you complete the courses offered by the Bureau of Internal Revenue?

A. Substantially all of the courses that they offered were [fol. 1467] completed.

Q. Are you a Certified Public Accountant?

A. I am.

Q. In what state did you take your examination to become a Certified Public Accountant?

A. In Wisconsin.

Q. Are you a member of the American Institute of Accountants?

A. I am.

Q. What was your first employment in accounting work?

A. As an Internal Revenue Agent, in Milwaukee, Wisconsin.

Q. What was the nature of your duties on that job?

A. Principally examining the books and records of various tax payers in order to determine whether or not their Federal Income Tax returns had been correctly filed.

Q. Was that the begining of your accounting work for the Bureau of Internal Revenue?

A. Yes, it was.

Q. Have you been in the Bureau of Internal Revenue since that time?

A. Yes, I have, except for about three years during the war.

Q. In what kind of service were you engaged during the war?

A. I was an Agent, or a Special Agent in the Counter Intelligence Corps.

Q. Did you return to the Federal Bureau of Internal Revenue when you left the military service?

[fol. 1468] A. I did.

Q. And have you been there since that time?

A. I have.

Q. What positions have you held in the Bureau since coming back to it after the war?

A. I returned in February, 1946, and for about eight or nine months I continued in my previous assignment as a Field Examiner, and in September or October of 1946 I was assigned as a Conferee and in that position handled protested cases.

Q. You mean protested tax cases?

A. Cases protested by the tax payers. In March of 1949, I accepted a position as Accountant and Auditor with the Excess Profits Tax Counsel in Washington.

Q. What are your duties in connection with your present position?

A. My duties are to analyze and review cases involving claims under Section 722 of the Internal Revenue Code.

Q. What are the duties involved under Section 722 of the Revenue Code?

A. Well, Section 722 provides that in certain instances, tax payers may be entitled to some amount of relief from the Excess Profits Taxes imposed during the last war. That is, in cases which meet the qualifications of the Statute, the tax payer is allowed to reconstruct his earnings for

the base period, which means the years 1936 through 1939, generally, and in that way increase his excess profits credit [fol. 1469] and thus bring about a reduction of their Excess Profits Taxes.

Q. In connection with those duties, has it been necessary that you consider, investigating operating incomes and costs for the proper determination of profits of operation?

A. It has.

Q. In what industries with respect to those tax matters are you assigned in the Bureau?

A. The industry group—well, I should explain. The council is divided into industry groups to facilitate the handling of cases involving various industries. The group in which I have been assigned handles cases involving machine tools, the entire electrical industry, radio stations and all associated types of concerns, and printing and publishing.

Q. Are newspapers and magazines included in the publishing?

A. Yes.

Q. Have you devoted the great part of your time to any one of those industries which you have named?

A. I have.

Q. To which one of those have you been principally devoting your time?

A. To newspapers.

Q. Could you state the number of newspaper cases which you have handled that involved accounting matters?

A. Well, in cases on which action by the Counsel has been completed, I handled approximately, twenty-five.

[fol. 1470] Q. Do you have other cases now pending?

A. I have several now pending.

Q. What has been the nature of the problems involved in those newspapers generally?

Mr. Wilson: If the Court please, I object to that. It seems to me it has no relevancy in the case as to what the nature of the problems of the newspapers are. He says that the Bureau of Internal Revenue has had some twenty-five cases on newspapers, and I hear no testimony that it included the Times-Picayune.

The Court: I understand he is qualifying his witness.

Mr. Flurry: That is right, Your Honor.

Mr. Wilson: Oh, I am sorry.

A. And under Section 722, or rather the Sub-sections under Section 722, those which have been apparently most applicable to newspapers were those cases in which the tax-payer was claiming a change in management, the acquisition of a competitor, the expansion of the business by acquiring some other type of business, and those cases involving claims of a temporary depression in the earnings.

By Mr. Flurry:

Q. Has it been necessary in the newspaper cases which you have handled to adopt some method of procedure for the making of allocations of costs?

A. I believe that in practically all cases, it has been necessary to some extent.

Q. Will you explain the nature of the problems involved [fol. 1471] in the making of allocation of costs in those newspaper cases?

A. Well, for instance, if we have a case where the tax-payer is claiming a change in management, his problems would be, first of all, to establish the fact of the change, and next to establish the fact that such change led to a higher level of earnings. So, in the field covered by the change in management, the practical way of establishing that such change led to a higher level of earnings would involve a comparison of the detailed costs before and after the change, if possible.

Q. Now what methods have been used by you in the making of allocations of costs in those cases?

Mr. Wilson: If the Court please, I understand this question does not go to his qualification but to an attempt to support somebody else's methods here. Am I right, Mr. Flurry?

Mr. Flurry: We want to show the Court, Your Honor, that this man is experienced in this type of a problem, and we want to show the type of methods used in arriving at what is profit and loss in a newspaper, and what are sound methods for that purpose.

Mr. Wilson: Well, if you are examining him as to his

qualifications, I, of course, have no objection; but if you are examining him as to what are sound methods of accounting on the problems he has had, I do object to it, because there is no showing that it has any relation to the situation in New Orleans or the situation of the Times-Picayune Publishing Company.

The Court: Does it go beyond his qualifications?

Mr. Flurry: We expect to——

[fol. 1472] The Court: I say this particular question?

Mr. Flurry: This particular question is to show the witness' qualifications to testify with reference to the methods used.

Mr. Wilson: Well, I have no objection to him asking the witness if he has devised methods and if he has used methods, but when he gets down to asking what the methods were, then I do object. If you will just ask him if he has used methods, I have no objection, Mr. Flurry.

Mr. Flurry: Well, of course, Your Honor, I don't see where it would qualify the witness to testify to these matters simply to ask him if he has used methods. Of course, he has used some kind of method, but what method? We are using this witness, Your Honor, as an expert in this subject to show Your Honor the reasonableness of the allocation system in breaking down the costs.

The Court: I think you can develop what, in his opinion, are the proper methods of accounting.

Mr. Flurry: That is exactly what we want.

The Court: You are asking him in connection with these other cases, what methods did he use, which I think is objectionable.

Mr. Flurry: I think that is for the purpose of showing his experience in those matters.

The Court: That comes back to the question of qualification. If that is the purpose——

Mr. Flurry: That is the purpose.

The Court: But if he goes into a discussion of the methods which he employed, I don't think that would have much [fol. 1473] probative force; because he employed a different method than they employed here doesn't mean he is right and they are wrong.

[fol. 1474] Direct examination.

By Mr. Flurry:

Q. What methods, in your opinion, Mr. Anderson, would constitute proper methods of arriving at an operating results as to profits and loss——

Mr. Wilson: I object.

Q. —— in breaking down the costs of a newspaper?

Mr. Wilson: I object to the question. It is a hypothetical question. There have not been sufficient facts stated in the hypothetical question for the witness to give any intelligible answer.

The Court: I don't think it is intended to be a hypothetical question.

Mr. Wilson: He asked him, in his opinion.

The Court: I think an opinion could be elicited without necessarily asking it through a hypothetical question.

Mr. Wilson: Well, we need some basis on which to——

The Court: I take it there will be a basis furnished, in order to fit into this situation here.

I overrule the objection.

A. I believe that the methods which I would use would vary with the amount of information available in the particular case, and would also not contemplate the use of one method for determining all costs, but I would try to associate the method used with the nature of the costs to be determined in order to try to get the most appropriate method of allocation for each particular type of cost.

[fol. 1475] Q. Did Mr. Harrison Houghton of the Department of Justice confer with you with respect to methods of allocating newspaper costs?

A. Yes, he did.

Q. Do you recall the approximate number of occasions on which he consulted with you?

A. I would say approximately five: perhaps more.

Q. Did Mr. Houghton explain to you at the time of those conferences the assignment with respect to the Times-Picayune Publishing Company?

A. Yes, he did.

Q. What was that explanation?

Mr. Wilson: Well now, just a moment. I object to any hearsay testimony in this case, or any explanations that Mr. Houghton may have given to Mr. Anderson. They certainly have no bearing upon any issue in this case. It is irrelevant, it is immaterial, it is hearsay testimony. I object to it on all grounds.

The Court: Well, I understand it is not being offered for the truth of the thing asserted.

Mr. Flurry: No, Your Honor.

The Court: It is simply to lay the foundation for the hypothetical questions which, I take it, you intend to propound?

Mr. Flurry: That is right, Your Honor.

The Court: This is to establish the basis for any investigation he made. Is that correct?

Mr. Flurry: That is right, Your Honor.

[fol. 1476] The Court: All right. I overrule the objection.

A. Well, Mr. Houghton told me that his problem was to determine whether or not the States had operated at a profit or loss.

By Mr. Flurry:

Q. Did he explain to you as to whether or not the Company had made complete allocations of its costs?

A. If I recollect correctly, Mr. Houghton indicated that the Company had not made a detailed breakdown on its books and records of the costs for the two newspapers operated by it.

Q. Did you advise Mr. Houghton with respect to a proper method which he should consider for the purposes of determining the profits or loss of the States?

A. I advised him with respect to several possible methods of allocating the various items in the Profit and Loss statements and I believe I indicated it might be all right for certain types of cost items, where it would not be applicable for other types.

Q. From your experience, Mr. Anderson, in the work you have stated, and as a C. P. A., in your opinion is the ratio of Circulation of one newspaper to the combined circulation of more than one newspaper published by the same pub-

lisher a sound basis on which to allocate costs as between the different papers?

A. With respect to certain items in the newspaper's itemization of costs, I would say Circulation would be a proper basis for allocation. However, I would not say that it applied for all items.

[fol. 1477] Q. I will ask you to refer to the left hand column of an exhibit in this case numbered "G-132-A", and refer to the departments listed at the left hand side of the page. Will you please state in which departments it is your opinion that Circulation would be a proper ratio upon which to base cost allocations.

A. I would say the Circulation Department, for one, and I would say that a combination of Circulation plus Published Pages would be applicable for the press room and mail room. I believe it would be applicable to some extent in some of the other items listed here.

Q. Would you mention those departments, please?

A. Well, I believe that Paper and Ink could best be allocated by using Circulation plus Published Pages, and I believe the expense of Roto Magazine production and This Week Magazine could be allocated on the basis of Circulation provided both papers were made up of those two items, or both papers carried those two items.

Q. Are there any others.

A. I believe without further break-down of these various items it would be difficult for me to say whether Circulation should be carried or not.

Q. Have you named all of the departments, Mr. Anderson, to which in your opinion it would be proper to apply the ratio of Published Pages in order to determine an allocation.

A. No, I haven't.

Q. Will you name any other department to which you [fol. 1478] think that the Published Pages allocation would apply?

A. I believe that could well be the best method of allocating expenses of the Composing Room, the Stereotype Room, the Photo-Engraving Department, and the Editorial Department. I believe those are all of the categories.

Q. From your experience, and as a C. P. A., in your

opinion is the ratio of Man Hours of one newspaper to the combined Man Hours of more than one newspaper published by the same publisher a sound basis upon which to allocate costs as between different newspapers?

A. I would say that it was, but with the same limitations that I attributed to the use of Circulation.

Q. Would you please point out the departments as listed on the exhibit which you have before you which, in your opinion, Man Hours ratio would be the proper ratio to apply?

A. I believe that with regard to the Composing Room, the Stereotype Room, Photo-Engraving Department, Editorial Department, Man Hours might well be as good a basis to use for allocation as the Published Pages. I believe the best results could be obtained by following up both methods of allocation. Man Hours might well be the best method of allocating Maintenance and Office Expense, and General Expense as well.

Q. You say "and General Expense?"

A. Yes.

Q. In your opinion is the ratio of Editorial Space of one newspaper to the combined Editorial Space of more than [fol. 1479] one newspaper published by the same publisher a sound basis upon which to allocate costs in the editorial department as between the different papers?

A. Yes, I would say that it was.

Q. In your opinion is the ratio of Advertising Lineage of one newspaper to the combined advertising lineage of more than one newspaper published by the same publisher a sound basis upon which to allocate costs in the advertising department as between the different papers.

A. Yes, I would say that it was.

Q. Have you used the records of the Audit Bureau of Circulation to develop ratios of circulation in the cases handled by you?

A. Yes, I have.

Q. Have you used Media Records on Published Pages and Advertising Lineage and Editorial Space?

A. Yes, I have.

Q. I believe you stated that Man Hours would be a proper ratio upon which to allocate the expense of the

Maintenance Department. In your opinion are there any other ratios which would be properly applied to Maintenance?

A. Well, one other possible method: in fact, one that I believe that has been used quite often, would be to allocate the Maintenance expense over the various departments affected, and then leave the expense follow the allocation in that particular department.

[fol. 1480] Q. In your opinion, would it be possible to spread the expenses in the Maintenance Department over the other departments, if the expenses had not been so done by the Company?

A. It would be possible, but it would probably be quite an arbitrary allocation, because, as far as I can see it, it would either have to be based on some such basis as man hours in the various departments or perhaps based on total expenditures in the various departments or perhaps based on an allocation of space occupied by the various departments.

I would say it would depend on the amount of information available, in order to make the allocation, but it would probably be very difficult, if the tax payer had not or if the company had not maintained its books in a manner permitting such allocation.

Q. In determining the operating profit or loss of one newspaper published by a publisher who also publishes another newspaper in the same plant, in your opinion, would it be necessary to allocate the expenses in the Maintenance Department as between the papers?

A. Yes, sir. I believe it would.

Q. Would that be true as to office expenses?

A. Yes. I believe it would.

Q. Would it be true as to Fixed Charges, including such as insurance and tax charges?

A. Yes. That would also apply.

Q. In your opinion, Mr. Anderson, should income from investments be considered as a part of the operating revenues in determining whether or not a newspaper is operating at a loss or a profit?

[fol. 1481] A. No. I believe not.

Q. In your opinion, would taking the lowest ratio as to each department of expense, simply because it is the lowest ratio, be a proper method of allocation of expenses between two newspapers?

A. No.

The Court: Why not?

A. Well, sir, I believe it would——

The Court: If it is a proper ratio to apply to any department, what would be wrong with taking the lowest as to each?

A. In some departments, sir, it might be that the lowest ratio would be the proper or the most reasonable ratio to use and produce the most reasonable results; however, in other departments, it might well be that the highest ratio would be the most reasonable and proper ratio to use; so, I believe to just arbitrarily take the lower ratio in each department would produce a distorted result.

The Court: Well, if it was unreasonable, why take it, in the first place? I mean: How can a thing be satisfactory and proper, individually, but not collectively?

A. Well, I believe that the only reason for determining the ratios would be for the purpose of determining the various types of ratios. It would be for the purpose of seeing how they tie out with one another; however, if we were allocating some such things as newsprint, it is my belief that, while a person might get a lower ratio by using advertising lineage, I believe advertising lineage would have little real relationship to newsprint and the cost of newsprint would be dependent on the number of pages [fol. 1482] published throughout the year, taking into consideration the circulation throughout the year.

The Court: I don't think the question is really based according to your statement. I think you have in mind the approach. It would depend on the approach to the problem.

A. Yes, sir.

The Court: The question assumed that each ratio had some probable basis.

The Court: At least, each standard that was set up; for example, man hours: If they had applied man hours to a department and applied circulation to that department in each instance, it was not the idea to find the lowest, but to

apply various standards, each of which was reasonable. That was my understanding.

Now, on that assumption, what would be wrong in taking the lowest in each department and considering that each one was its reasonable?

A. Well, sir, I would say that in a case such as this—For instance, I mentioned that in the composing room a ratio might be well based on published pages. It also might be based on man hours; yet, it is possible that one of those ratios would produce a result either high or low which would be on the face of it, unreasonable.

The Court: Proceed.

By Mr. Flurry:

Q. Mr. Anderson, what did you mean when you said: "On the face of it, it would be unreasonable"?

[fol. 1483] A. Well, let's say that we have a breakdown of man hours.

Q. Speak a little louder.

A. Let's say that we have a breakdown of man hours and let's say that produces a result which would indicate that perhaps ten per cent would be allocable to one paper. If we had advertising lineage in this one paper which we will say amounted to 50 per cent, I believe that, on the surface of it, it would indicate that the result reached by using man hours had some error. Either the man hours were in error or something in the computation was in error.

Mr. Flurry: You may examine.

Cross examination.

By Mr. Wilson:

Q. Mr. Anderson, how old are you?

A. I am thirty-five years old, sir.

Q. When did you graduate from college?

A. I never went to college, never graduated from college, rather.

Q. Has all of your experience in accounting been with the Bureau of Internal Revenue?

A. Yes, sir.

Q. When were you first employed by the Bureau of Internal Revenue?

A. In April, 1937, sir.

Q. And what is your official position, now?

A. I am the—The official title is Accountant and Auditor, [fol. 1484] with the designation in parentheses, Conferee.

Q. In appearing in this case, do you purport to speak for the Commissioner of Internal Revenue?

A. No, sir.

Q. Have you consulted with the attorneys for the Bureau of Internal Revenue before coming here to testify?

A. No, sir.

Q. Have you consulted with Mr. Lynch, the General Counsel of the Treasury, before coming here to testify?

A. No, sir.

Q. You are appearing here as an individual, I understand? And you are not appearing here in your official capacity?

A. My services, in so far as I know, were requested by the Department of Justice through the Acting Chairman of the Excess Profits Tax Counsel, and I am appearing here under his direction.

Q. Then, are you speaking for the Acting Chairman of the Excess Profits Tax Counsel?

A. No, sir. I speak only for myself.

Q. When were you subpoenaed, Mr. Anderson?

A. I was not subpoenaed, sir.

Mr. Kramer: If the Court please, would it be improper to suggest that the easy way to get this is to ask counsel?

Mr. Wilson: I am not trying to get it the easy way, Mr. Kramer.

By Mr. Wilson:

[fol. 1485] Q. When did you arrive in New Orleans, Mr. Anderson?

A. I believe around 4:00 o'clock is when I arrived at the airport yesterday evening.

[fol. 1486] Q. Were you in conference last night with Mr. Flurry?

A. Yes, I was, Sir.

Q. Did you go over this entire list of questions that Mr. Flurry has read to you this morning?

A. Yes, sir.

Q. And I assume you gave him the same answers last night when you rehearsed this as you gave on the witness stand this morning?

A. Sir, I don't believe you could call it rehearsing——

Mr. Flurry: Your Honor, I object to that. Of course, we conferred with Mr. Anderson. We object to the reference to "rehearse". Of course, we discussed the matter with the witness. Rehearsing, I think, has a different connotation.

The Court: He is under cross-examination. That is just counsel's own version of the matter.

A. Shall I answer that?

The Court: Yes.

A. As I say, I don't call it rehearsing. However, they did question me with regard to my opinions, and my ideas.

By Mr. Wilson:

Q. Now, what has been your experience in the newspaper business, Mr. Anderson? Have you had any experience at all in the newspaper business itself?

A. No, sir. As I brought out, I have been employed by the Bureau or the Government in some capacity at all times.

Q. And when did Mr. Houghton first consult you?

[fol. 1487] A. I believe it was in—well, I can't positively say, but it was either February or March; it may have been even in the latter part of January.

Q. And that conference was held where?

A. In my office.

Q. How long did it last?

A. Oh, I believe the first meeting lasted several hours.

Q. And when was the next meeting?

A. I don't recall the date, Sir.

Q. How many meetings were there altogether?

A. As I said, I believe there were five or more.

Q. Mr. Anderson, I hand you Government Exhibits 73, 74 and 72, and I ask you if Mr. Houghton showed you those documents in the course of these conferences?

A. No, sir, he did not.

Q. Have you ever seen any reports or records of The Times-Picayune Publishing Company?

A. No, sir, I never have.

Q. Have you ever——

A. Well, let me qualify that. I believe I saw some pencilled information as to the expenses in the various departments.

Q. Well, I hand you Government Exhibits 75, 76 and 77, and I ask you if those are the pencilled figures that you saw?

A. I can't identify them specifically, Sir. The figures I saw were not bound in any way, and I believe were on only [fol. 1488] one or two sheets of paper.

Q. Well, did Mr. Houghton tell you whether those were copied from the reports or records or books of The Times-Picayune Publishing Company, or whether they were figures that he just made up?

A. I don't believe we discussed that, Sir.

Q. I mean whatever figures you looked at, you simply accepted as being the figures that you were going to work on?

A. That is right. In fact, I did not work on the figures myself. All I did was discuss possible methods of breaking down the figures between the two newspapers.

Q. Mr. Anderson, if a publishing company such as The Times-Picayune Publishing Company is putting out a morning edition called The Times-Picayune and an evening edition called the New Orleans States and a Sunday edition called the Times-Picayune-New Orleans States, what occasion would you have in connection with your work to try to determine any allocations of revenues or costs between those two papers?

A. Well——

Q. I am talking about in connection with your work for the Bureau of Internal Revenue.

A. My work on Section 722 would not ordinarily involve allocating costs between companies. It would, however——

Q. Well, no, these aren't separate companies. Understand me, Mr. Anderson, these are not separate companies.

A. I mean between divisions. However, it would involve

[fol. 1489] determining costs for possibly several or all phases of the operations; and then comparing those costs with the costs which might be expected if certain assumptions are made with regard to either a change in character or a change in conditions under which the company would operate.

Q. Well, assuming that you have a company such as The Times-Picayune Publishing Company that has a morning edition called the Times-Picayune, and an evening edition called the States, and a Sunday edition called The Times-Picayune-New Orleans States, so far as your work is concerned, the only thing you would be interested in would be the overall picture for The Times-Picayune Publishing Company, isn't it?

I mean you would want to know what the profits and losses of the company were?

A. Ordinarily, that would be true; however, I have had some cases involving the claim on the part of the taxpayer of dropping a loss operation, or if the taxpayer has other phases of the business such as a radio station, we have often had to deal with allocations of income between the newspaper and radio station.

Q. But you have never divided up income between editions of a paper, have you?

A. Between papers?

Q. Between editions of the same paper. There is a publishing company that has a morning edition called the Times-Picayune, and evening edition called the New Orleans States, and a Sunday edition called the Times-Picayune-New Orleans States. You have never been interested in [fol. 1490] dividing up revenues or expenses or anything else between those editions, have you?

A. Oh, yes, if you call them editions. I call them newspapers.

Q. All right; you call them newspapers. Now tell me for what purpose the Bureau of Internal Revenue will let us get a refund under Section 722 because you call them newspapers?

A. Well, hypothetically, let's suppose——

Q. No, I mean just tell me.

A. Well, I am trying to give you an example.

Q. All right: Let's have an example.

A. Let's suppose that back in 1938 the Times-Picayune, the Corporation, had decided to drop the publishing of the States, and, therefore, filed a claim under Section 722, claiming that it had changed its character by eliminating a loss operation. In a case like that it would be necessary to allocate the income between the States and the balance of the corporate activities.

Q. Well, now, you have given me a hypothetical situation, and you tell us that you have handled twenty-five cases in your life time. Have you ever had a case like that?

A. I have not had that specific situation. However, I have had similar cases, several, involving magazines whose problems were almost identical.

Q. These involved magazines?

A. That is right.

Q. Now, Mr. Anderson, you have examined for Mr. Flurry [fol. 1491] this exhibit, I believe, 132-A.

A. 132-A.

Q. I take it that you have also seen, in connection with 132-A, you have probably seen Exhibit 133-A, have you not?

A. I couldn't say, Sir.

Q. I will show it to you so you can examine it.

A. (Witness examining Exhibit 133-A.)

Q. Have you had an opportunity to examine Government Exhibit 133-A?

A. I believe I saw it, but I didn't look at it carefully at all. It was not more than a glance.

Q. Well, do you understand that that exhibit purports to allocate expenses as between the Times-Picayune morning and Sunday and the New Orleans States evening?

A. That is what it appears to be, Sir.

Q. And looking at the figures there, as you understand that exhibit, does it allocate it on three different bases?

A. That is the way it appears.

Q. And what are those three bases, as you understand the exhibit?

A. Well, the heading of the columns are Man Hours, Published Pages, Circulation.

Q. And does it appear to you, as an Accountant, that each

method has been used consistently as a basis of dividing or in allocating the revenues and the expenses?

[fol. 1492] A. With the exceptions noted, it appears that that was—that the same basis was followed through in each column, except for, say, paper and ink there, there is a note taken from column 1.

Q. Yes, and then there is another note——

A. On Published Pages, there is also a note on—I believe it is advertising, Suggested Allocations with respect to Advertising, there is a note indicating that the suggested allocation was based on Published Pages.

Q. But with those two exceptions, you would understand, as an Accountant, you would understand that to mean that all the other divisions were precisely in accord with the headings, Man Hours, Published Pages and Circulation, would you not?

A. Yes, sir.

Q. Well, now, you have given an opinion as to proper ways of allocating expenses. Would you think it would be fair to take a heading like Man Hours and justify it right down the line the way it is done here?

A. No, sir; as I indicated before, I don't believe that one method should be followed through in all categories.

Q. And you would make the same answer in regard to Published Pages, would you not?

A. Yes.

Q. And you would make the same answer in regard to Circulation, would you not?

A. Yes, sir.

[fol. 1493] Q. And wouldn't you say, in your opinion as an Accountant, that that exhibit is absolutely worthless?

A. No, sir, I believe that I would consider it.

Q. And then do it over again, wouldn't you?

A. Yes, sir, I would do it over again.

Q. I certainly would too. I want you to look at Exhibit 19 and tell me, not whether that is a good way to do it, but whether that isn't just as good a way as Government Exhibit 133-A. (Defendant's Exhibit 19 handed to witness.)

A. I would say that this might be as good a way.

Q. It is certainly possible that that is just as good as any one of the methods applied right down the line, isn't it?

A. On the surface, it is possible.
Q. It might be and it might not be?
A. Yes, sir.

Mr. Wilson: You may take the witness, Mr. Flurry.

Redirect examination.

By Mr. Flurry:

Q. Mr. Anderson, what records of the Company would you consider the proper source from which to determine profit or loss through an allocation of expenses as between different departments of the newspaper?

A. Well, I believe the starting point in probably all cases would be the general ledger.

Q. Are you familiar with the term "control records"? [fo. 1494] A. Yes, sir.

Q. Is that or is it not the same as the general ledger?

A. No, sir, I believe that would be—if you are using that term in connection with the cost system, I believe that would be a subsidiary record.

Mr. Flurry: That is all.

Recross examination.

By Mr. Wilson:

Q. If I understand you correctly, Mr. Anderson, if you were going to attempt to allocate the expenses of a newspaper, you would want to see the general ledger, would you not?

A. I believe I would like to, yes, sir.

Q. And you wouldn't rely on somebody to go in and get you some copies of some reports made by the company, would you?

A. Well, I can't say that, Sir, because it has not always been possible for me to personally go and see the taxpayers' books. I have had to rely, because of circumstances, on the work of others.

Q. Well, as an Accountant for the Bureau of Internal Revenue, would you take these reports and rely on them for purposes of checking our taxes, Exhibits 72, 73 and 74?

A. I would consider them but I wouldn't say that I would rely on them, or any other particular record.

Q. Well, in other words, you would come in and look at our books?

A. Or see that somebody did, yes, sir.

[fol. 1495] Mr. Wilson: That is all.

The Court: Let me ask you a question. During your testimony, you said that it would be necessary to allocate the costs as between the two papers. You consider them as papers. What do you mean by that statement, it would be necessary. For what purpose?

A. I don't quite follow that question, Sir.

The Court: All right. Where, as here, two papers are published by the same publishing company—keep that in mind as we are discussing the situation here—I understood you to testify that it would be necessary to allocate costs of both papers. Did you say that?

A. Yes, sir.

The Court: What did you mean by that?

A. Well, are you speaking, Sir, with regard to a hypothetical case that we may have had?

The Court: I think you had in mind the situation here, or any case in which the publishing company is publishing either two editions or, as you consider them, two separate papers. You said it would be necessary to allocate costs between the two papers.

A. Well, it was my understanding, Sir, that the problem Mr. Houghton had, and the problem that appears to be present here is an allocation of the costs to each paper.

The Court: You mean then, for the purpose of the problem which he presented, it was necessary to allocate the costs?

A. That is right, Sir.

The Court: You did not have in mind that it is necessary [fol. 1496] for the publishing company to do that?

A. Sir, I believe that in many cases that we have had that question has come up as to the extent of cost records of various publishers. A substantial number of publishers do operate more than one paper and do not keep separate records. I believe that is quite common. In many in

stances, I believe the management is probably interested only in final results.

The Court: Where the management is interested in the final result, it is not necessary to allocate the costs?

A. That is correct, Sir.

The Court: Any further questions, gentlemen?

Mr. Flurry: Yes, Your Honor.

Redirect examination.

By Mr. Flurry:

Q. Mr. Anderson, I show you Government Exhibit Number 8 and ask you to examine Schedule 1 of that exhibit.

A. (Handing Government Exhibit 8 to witness.)

Q. The question is, in your opinion, does that report indicate to you whether or not the Times-Picayune Publishing Company had attempted to make a separate accounting of profits and losses with respect to the Times-Picayune and the States?

Mr. Wilson: I will so stipulate, Your Honor, that they did attempt to make such an allocation on that report.

By Mr. Flurry:

Q. Will you answer the question?

[fol. 1497] A. It certainly appears so.

Mr. Flurry: That is all.

Mr. Wilson: That is all, Mr. Anderson. Thank you very much.

(Witness excused.)

Harrison F. Houghton, resumed the witness stand, and testified further as follows:

Redirect examination.

By Mr. Flurry:

Q. Mr. Houghton, if you had found that the Company had allocated expenses to the States in all departments as

nearly to your allocations as they did in all but five departments, and then showed a profit on their statement, would you be here today?

A. No, sir.

Mr. Flurry: You may examine.

Mr. Wilson: That is all, Mr. Houghton.

(Witness excused.)

(The Court: Court will recess until 11:30.)

[fol. 1498] Mr. Turnage: If Your Honor please, this witness was supoen-ed to appear when the other Classified witnesses appeared. He was sick at that time, so he has been called today.

The Court: I see.

Burt C. Guidroz, a witness called by and on behalf of the Government, being first sworn, was examined and testified as follows:

Direct examination.

By Mr. Turnage:

Q. Will you please state your full name and address.

A. My name is Burt C. Guidroz.

Q. What is your address, Mr. Guidroz?

A. My address is 825 Gravier Street.

Q. What is your business, Mr. Guidroz?

A. I am a Realtor.

Q. Where is your business locafed?

A. 825 Gravier Street.

Q. What is your connection with such business?

A. Well, I am the owner of the business.

Q. How do you present your listings on the property that you have for rent or for sale to the public?

A. Through newspaper advertising.

Q. What type newspaper advertising do you use? By that I mean retail, general, or classified.

A. Classified.

[fol. 1499] Q. Are you using newspapers in the city of New Orleans?

A. Yes, I am.

Q. What newspapers are you presently using?

A. The Times-Picayune and the States.

Q. Can you purchase the Times-Picayune to the exclusion of the States, or the States to the exclusion of the Times-Picayune?

A. No, I cannot.

Q. What effect, if any does this requirement that you must take both when you take one have upon you in your selection of newspaper media in the city?

A. Well, of course, as all businesses do, we operate on a limited budget, and of course, the Times-Picayune is the best newspaper medium in the city and we select it, of course, always. And after I spend my money with the Times-Picayune and the States I don't have any more left to spend with anybody else.

Q. Do you desire to run the States, to run ads in the States, in the amount that you are now doing?

A. Well, I would rather be in position of being able to select the States whenever I choose or some other medium whenever I choose.

Q. But at present you are not able to do that?

A. No, because I spend all my money under the practical contract with the Times-Picayune and the States. I spend all my money with them.

[fol. 1500] Mr. Turnage: Your witness.

Cross examination.

By Mr. Phelps:

Q. Mr. Guidroz, as I understand your testimony, you would like to be in position of being able to select either the States or the Times-Picayune or the Item. Is that correct?

A. Yes. I would like to be in the position where I could select my own medium. Of course, the Picayune, we always select because it has the greatest circulation in the City.

Q. As a matter of fact you have used the Item to quite an extent although you are not using it now?

A. I have not used it too much.

Q. Thirty to forty per cent of your advertising in 1950?

A. I wouldn't think so. As a matter of fact, I don't have the record.

Q. Could you estimate it for us?

A. I shouldn't think over ten or fifteen per cent.

Q. In what year?

A. I don't think I used it at all since 1949. I don't think I used it in '50.

Q. As a matter of fact, as far as your budget is concerned, there is no reason why you could not divide your budget and spend half and half?

A. That is right, too. The reason I don't do it is because I have more spread in the Times-Picayune.

[fol. 1501] Q. You could spend half of your money in the Item and reach a group there, and spend the other half in the States and reach another group there, couldn't you?

A. That is what the Item would like to have me do.

Q. As a matter of fact, you could advertise one property in one paper and another property with the other paper, couldn't you?

A. That is what the Item would like to have me do.

Q. That is what you have done at times in the past, isn't it?

A. Not too much. I have done very little advertising in the Item.

Q. I believe you told me that your real feeling was as an individualist you wanted to be free to choose for yourself. Isn't that right?

A. That is exactly right; yes.

Mr. Kramer: May I inquire—He said, "I believe you told me."

Mr. Phelps: The witness has answered the question.

Mr. Kramer: We will ask him on redirect. I just wondered what he meant.

By Mr. Phelps:

Q. Do you remember when, at any time when the Times-Picayune Publishing Company has not sold its classified advertising, morning and evening, as a unit?

A. Well, I think I have always had a combination contract.

Q. Do you remember back when the Item was publishing morning and evening?

[fol. 1502] A. Yes, I do.

Q. Did you have a combination contract with them?

A. I don't remember.

Q. As a matter of fact, Mr. Guidroz, you cut your advertising in the Times-Picayune-States substantially in 1950 over 1949, didn't you?

A. I wouldn't know.

Q. I beg your pardon?

A. I wouldn't know.

Q. Would it refresh your recollection if I gave the figures?

A. I don't think it would prove anything to me, except from checking my own records.

Q. Suppose I told you in 1950 you ran 25,000 lines in the Times-Picayune Publishing Company. In 1949 you ran 38,000 lines with the Times-Picayune Publishing Company. Would that refresh your recollection.

A. 38,000 in '49?

Q. Thirty-eight in '49 and twenty-five in '50.

A. I don't remember, sir; it may be.

Q. Does that sound about right?

A. I really wouldn't know. I did not check my records before I left the office. I don't think we are advertising quite as heavily now, but that is 1950 you are talking about.

Q. That is correct.

A. 1950, I don't remember.

Mr. Phelps: We have no further cross examination, [fol. 1503] Your Honor.

Redirect examination.

By Mr. Turnage:

Q. Did I understand you correctly, Mr. Guidroz, when you stated that you are presently running no advertising in the Item?

A. That is correct.

Mr. Turnage: No other questions.

(Witness excused.)

Mr. Kramer: If the Court please, the Government has a few documents, the authenticity of which I think will be agreed to by counsel, which we would like to offer and then rest.

Shall I proceed?

The Court: Proceed.

Mr. Kramer: As Government Exhibit 144, I offer photostatic copy of pages from the Times-Picayune, dated Tuesday, July 18, 1933, labeled in the left ear, "Night Edition," page numbers being 1 and 10 and a portion of Page 10 is enlarged on the third page of the exhibit and the copy of it was furnished to counsel for Defendants, yesterday.

This is the copy for the Court (indicating) and this is the Clerk's copy.

(Documents handed to the Clerk.)

Mr. Phelps: If the Court please, those are not properly identified, but we are perfectly willing to concede that they are what they purport to be.

Mr. Kramer: Thank you.

Mr. Kramer: I would like to read the relevant portion:

(Mr. Kramer read Government Exhibit "G-144".)

The Court: The third sheet does not purport to contain all that you have read, does it?

Mr. Kramer: The third page?

The Court: Yes.

Mr. Kramer: No.

Mr. Phelps: I think if you look in the next column, you [fol. 1505] will find the balance.

Mr. Kramer: Oh, all right.

(Mr. Kramer continued reading.)

The Court: This third sheet is misleading. Do you have a third sheet on there?

Mr. Kramer: It is simply an enlargement.

The Court: It only covers part——

Mr. Kramer: I am perfectly willing to remove it.

The Court: All right. I thought maybe the copy I have is different from the one you have.

Mr. Kramer: The third sheet of Exhibit 144 is an enlargement of only part of the second page of that exhibit.

I offer as G-145-A, -B, -C, -D and -E, and I regret to say that at the moment I have no copies for Your Honor.

Mr. Phelps: The Court can use ours. We only have these two sets. There are some notations on here that are for our own use.

(Documents handed to the Court.)

The Court: I will hand them back to you.

Mr. Kramer: These are copies of billing forms which are used by the Company, each one of which refers to the Times-Picayune issued every morning and Sunday and the New Orleans States, issued every evening, except Sunday.

There are also certain columns on each of these sheets showing how they billed morning and evening, Sunday and evening, Sunday and morning. That is in the case of 145-D.

[fol. 1506] Exhibit 145-E has daily and combination under the States; and, under the Times-Picayune, it has daily Sunday, daily combination, Sunday combination under the words "Times-Picayune".

I also would like to call the Court's attention at this moment to G-33, which is simply one of the letters we have introduced, being the official stationery of The Times-Picayune Publishing Company which refers to the Times-Picayune, published morning and Sunday, and the States, evening, G-33 being one example of that kind of stationery.

The Court: There are several like that.

Mr. Kramer: There are several like that.

Has G-144 been admitted, Your Honor?

The Court: It will be admitted.

(The document referred to was marked "G-144" for identification and was received in evidence.)

Mr. Kramer: I now offer G-145-A through E.

Mr. Phelps: We have no objection, except we think they should speak for themselves instead of show what counsel believes them to say.

The Court: They will be admitted.

(The documents referred to were marked "G-145-A through E" for identification and were received in evidence.)

Mr. Kramer: I offer as G-146 the Audit Report for the twelve months ending December 31, 1949, made by the Audit Bureau of Circulation for Times-Picayune (morning).

[fol. 1507] The Court: What period?

Mr. Kramer: December 31, 1948, for the Times-Picayune (morning), Sunday Times-Picayune-New Orleans States.

Here is a copy for Your Honor.

(Document handed to the Court.)

The Court: It will be admitted.

(The document referred to was marked "G-146" for identification and was received in evidence.)

[fol. 1508] Mr. Kramer: As "G-147", I offer Audit Report for the period twelve months ending December 31, 1949 for the New Orleans States, prepared by the Audit Bureau of Circulations.

The Court: Let it be admitted.

(The document marked G-147" was received in evidence.)

Mr. Kramer: As "G-148", I offer a copy of Audit Report prepared by Audit Bureau of Circulations of the New Orleans. Item for the twelve months ending December 31, 1949.

The Court: Let it be admitted.

(The document marked "G-148" was received in evidence.)

Mr. Kramer: As "G-149", I offer "Noticed Document No. 18," being a photostatic copy of a letter from Nelson R. Swayze, Advertising Manager, New Orleans States to Mr. J. A. Goldsack, and hand a copy to Your Honor.

The Court: Let it be admitted.

(The document marked "G-149" was received in evidence.)

Mr. Kramer: As "G-150", I offer a letter from Haskins & Sells to the Times-Picayune Publishing Company, dated May 11, 1946, and I desire to read only one part, and after reading that I will read anything else Counsel wants me to read:

On page 3;

"Allocation of Expenses with Respect to the Operations of The Times Picayune and New Orleans States."

[fol. 1509] "In connection with the above we reiterate the recommendation made in our report dated May 18, 1945."

May "G-150" be admitted, Your Honor?

The Court: Let it be admitted.

(The document marked "G-150" was received in evidence.)

Mr. Wilson: Mr. Kramer, may I inquire, do you propose to offer Mr. Leonard Nicholson's deposition?

Mr. Kramer: No, we do not.

The Court: Mr. Kramer, I wonder, if at some future time, you will mark these (handing documents to counsel) so I can make them part of my file, please. I think there were some there you have not introduced. That ledger sheet, I don't think you introduced.

Mr. Kramer: That is correct. We will get you a complete set by the week-end.

That is all.

Mr. Flurry: We renew our offer, at this time, of Government's Exhibits 127 through 140-A and B, and Government Exhibit 143, which were the tabulations and charts by Mr. Houghton.

Mr. Wilson: At this time I want to enter an objection on the part of the defendants to all of those exhibits. The evidence has very clearly demonstrated that the exhibits are absolutely worthless in this case and I think they would tend to confuse the record. The last witness that was on the stand said they were not proper methods of allocation. Mr. Houghton, himself, says that he has no information [fol. 1510] sufficient to make proper allocations, and I suggest to the Court that the exhibits are not only irrelevant and immaterial but they are misleading.

Mr. Flurry: We think, Your Honor, that the objection goes to the weight to be given to the exhibits by the Court rather than to the admissibility.

The Court: I think so. And with respect to the statement of Mr. Anderson concerning 133, he did not have the benefit of the 132 series, which are inter-related. As I understand these statements 132 and 133 are inter-related. The 133 exhibits represent recapitulations, you might say, of final figures. I think the explanation made by Mr. Houghton is proper and correct: that there was no reason why he should carry forward all the footnotes from the various sources which went to make up the final figures.

I think 132 and 133 must be read together and anyone reading them, it is the view of the Court, will understand them.

Mr. Flurry: That was the purpose, Your Honor.

Mr. Wilson: May I call attention to the fact that on direct examination Mr. Flurry examined Mr. Anderson on 132 and he had 132 in front of him when I had to stop and find 133 so that he could have the two together.

Mr. Flurry: May it please the Court, we only questioned Mr. Anderson with reference to the departments showing in the left hand column in 132.

The Court: The objection will be overruled and the documents will be admitted.

[fol. 1511] (The documents marked "G-127" through "G-140" A, B," and "G-143" for identification, were received in evidence.)

Mr. Kramer: The government rests, Your Honor, motion to dismiss and ruling thereon.

Mr. Phelps: May it please the Court, I have here a written motion which I would like to read. I would like to serve a copy on Government's Counsel (handing document to Counsel).

"United States District Court for the Eastern District of Louisiana, New Orleans Division, United States of America, Plaintiff, versus Times-Picayune Publishing Co., L. K. Nicholson, John F. Tims, Jr., Aubrey F. Murray, and Donald W. Coleman, Defendants. No. 2797, Civil Action.

"Defendant moves the Court to dismiss this action with

prejudice on the ground that Plaintiff, upon the facts and the law, has shown no right to relief."

It is dated May 11, signed by all Counsel, and has a certificate of service in open court.

I would like to file this motion with the Court.

The Court: Let it be filed.

(The document was filed.)

Mr. Phelps: Would the Court like to hear argument?

The Court: Do you wish to be heard? Do you wish to argue the motion?

Mr. Phelps: If the Court would like to hear argument on it we would like to present our argument on Monday.

[fol. 1512] The Court: What is your position?

Mr. Kramer: Your Honor our view is if the Defendants wish to be heard, we, of course, wish to be heard in reply. As Mr. Phelps has said so often, our views are diametrically opposed.

The Court: Let me see Counsel at the bench.

(Bench conference).

The Court: After considering the matter, it is the Court's view that the ruling on the motion to dismiss should be reserved.

The ruling on the motion will be reserved.

Mr. Kramer: If the Court please, do I assume it is the intention of everyone to go ahead on Monday morning with the defense of this case?

Mr. Wilson: Yes sir.

Mr. Phelps: It is our understanding, if the Court please.

The Court: Very well.

Mr. Phelps: If the Court please, for the information of Government Counsel we propose to put on the Accounting Testimony on Monday Morning.

The Court: Very well.

Court stands at recess until Monday morning at 10:00 o'clock.

(Whereupon, as at 12:05 P. M., the trial was adjourned until Monday, May 14, 1951.)

[fol. 1513] PROCEEDINGS OF MAY 14, 1951

(The trial was resumed, pursuant to adjournment, on Monday, May 14, 1951.)

Mr. Kramer: If the Court please, I hand to the Reporter the corrections that have been agreed upon between counsel covering the transcript of last week. I might add that there are still about eight or ten corrections that we are working on and hope to get agreement on those. If not, we will have to take them up in open court today or tomorrow.

The Court: Very well.

Mr. Wilson: Mr. Conroy, will you take the stand?

GEORGE EDWARD CONROY, a witness called by and on behalf of the defendants, being first sworn, was examined and testified as follows:

Voir Dire examination.

By Mr. Wilson:

Q. Will you state your full name, please?
A. My name is George Edward Conroy.
Q. Where do you live, Mr. Conroy?
A. I live in Oakridge Park, Metairie, a suburb of New Orleans.
Q. What is your occupation?
A. I am a Certified Public Accountant.
Q. Where do you have your offices?
A. 1021 Hibernia Bank Building, in New Orleans.
Q. What firm are you with?
A. Haskins & Sells.

[fol. 1514] Q. What is your position in that firm?
A. Resident Partner.
Q. Will you state for the Court your education and experience in preparation for becoming a Certified Public Accountant?
A. I was educated in the public schools of New Orleans. I studied accounting by correspondence, passed the

Louisiana C. P. A. examination in May, 1922, which is 29 years ago.

Q. When where you first employed by Haskins & Sells?

A. I was first employed by Haskins & Sells in May, 1923.

Q. When did you become a partner in that firm?

A. On June first, 1937.

Q. And have you been a partner in the firm ever since?

A. Ever since.

Q. Would you state for the Court the general nature of the work done by Haskins & Sells?

A. Our firm serves businesses and others throughout the United States and in other parts of the world. The scope of our services include, generally, audits of the accounts of businesses, Government, and others; services in the preparation of tax returns and general accounting services of all kinds.

Q. Approximately how many offices does Haskins & Sells have in the United States.

A. We have twenty-eight offices in the United States.

Q. And are those located in the principal cities of the country?

A. Yes, they are located in the principal cities in the [fol. 1515] United States.

Q. Are they localized, or are they spread all over the United States?

A. They are all over the United States, in all sections of the country.

Q. And has your firm, at one time or another, done work for governmental agencies?

A. Yes. We have frequently done work for governmental agencies. The most recent service, I think, was for the Atomic Energy Commission.

Q. And have you done work for the Treasury Department?

A. Well, the firm of Haskins & Sells was started in 1895, following a two-year assignment by Mr. Haskins and Mr. Sells as experts serving a Special Commission of the United States Senate appointed for the purpose of making a reorganization of the accounting system used by the United States Government at that time.

Q. Have you done work for the City of Chicago?

A. In later years we were also employed by the City of Chicago with the same general purpose in mind.

Q. Does your firm do auditing work for various newspapers throughout the country?

A. Yes, we do.

Q. Now, in connection with your work, have you done auditing work for the Times-Picayune Publishing Company?

A. We have.

[fol. 1516] Direct examination.

By Mr. Wilson:

Q. How long have you been employed to audit the books of The Times-Picayune Publishing Company?

A. We were first employed by The Times-Picayune Publishing Company in May, 1944.

Q. And has your firm been the auditors for The Times-Picayune Publishing Company since that date?

A. We have.

Q. And all the time you were employed were you the Resident Partner of Haskins & Sells?

A. I was.

Q. Were you in charge of the New Orleans office of Haskins & Sells?

A. I was.

Q. In connection with doing such work as this, do you personally go in and read the books and copy down the figures?

A. No.

Q. How is that done, Mr. Conroy?

A. Well, we have in our employ a number of accountants. We designate them as Principals, In-Charge Accountants, Senior Assistant Accountants, and Junior Assistant Accountants. We usually assign to the engagement an In-Charge Accountant, with one or more Assistants, as may be necessary for the proper execution of the job. During the progress of the work it is our policy for the In-Charge Accountant to consult frequently with the Principal and the Partner on the problems that arise as the work progresses.

[fol. 1517] Q. And as resident partner, is it your responsibility to see that that audit was properly conducted?

A. It is.

Q. Do you consult with the people doing the work as the work progresses?

A. I do.

Q. Do you go over all of the work sheets with them?

A. Before we render our report of the examination of the accounts of any client, we review all of the work papers prepared by our accountants and we are required to initial such work papers and indicate our approval of the scope of work done in connection with the verification of each account.

Q. And when the final results of your work are prepared and submitted to the client, what is your function in connection with that?

A. When the report is completed, the certificate which is rendered to the Company, is signed by me.

Q. And you sign that on behalf of your organization, Haskins & Sells?

A. I sign it with the firm name, Haskins & Sells.

Q. And the certificate, of course, is the certificate of the accounting firm of Haskins & Sells?

A. That is correct.

Q. Is The Times-Picayune Publishing Company the only newspaper you have ever done auditing work for?

A. No.

[fol. 1518] Q. In handling the accounts and doing the auditing of The Times-Picayune Publishing Company and making a certificate to the Board of Directors of that Company, exactly what is the function which you perform, Mr. Conroy?

A. In connection with the work for the Times-Picayune, the scope of our engagement embraces the rendition to the Times-Picayune of a certificate, and in order to render such certificate, we are required to examine all of the accounts of the Company in order to render a certificate of the financial condition of the Company as of a certain date, and the results of its entire operations of the year ended on the balance sheet date.

Q. Well, Mr. Conroy, in your opinion, as an accountant,

is it necessary to break the expenses and the revenues of The Times-Picayune Publishing Company as between the morning edition, the evening edition and the Sunday edition?

A. It is not.

Q. Well, in your opinion as an accountant, in making an audit of the firm books, is there any reason for doing so?

A. Management may desire to have certain breakdowns of its accounts, but as far as we are concerned, we must deal with the accounting system that the Company has. Our certificate is rendered with respect to the results of operations of The Times-Picayune Publishing Company, or any other company, with respect to its entire operations.

Q. Mr. Conroy, I hand you here Government Exhibits 6, [fol. 1519] 7 and 8. I ask you if those were prepared by your firm?

A. They were.

Q. Will you just tell the Court what Government Exhibits 6, 7 and 8 are?

A. Government Exhibit Number 6 is a report on our examination of the accounts of The Times-Picayune Publishing Company for the year ended December 31, 1947.

Government Exhibit Number 7 is a report on our examination of the accounts of The Times-Picayune Publishing Company for the year ended December 31, 1948.

Government Exhibit Number 8 is a report on our examination of the accounts of The Times-Picayune Publishing Company for the year ended December 31, 1949.

Q. Well now, will you just take Government Exhibit 8 there, the last one you had in your hand, and tell me whether it is prepared according to the same principles and the same method as you prepared Government Exhibits 6 and 7?

A. Without referring to the other exhibits, I know they are, because, as part of our certificate, there is a phrase included which states that "The accompanying balance sheet and summary of net income and undivided profits present fairly the financial position of the Company on December 31, 1949, and the results of its operations for the year then ended in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year."

Q. Well now, would you refer to the pages in that exhibit [fol. 1520] and tell me just what part of the exhibit that refers to.

A. The first statement appearing in our report is Exhibit A, Balance Sheet, December 31, 1949, and 1948, in comparison, of The Times-Picayune Publishing Company. The certificate refers to that exhibit and also refers to Exhibit B, which is a Summary.

Q. Which is a part of Exhibit 8?

A. It is not a part of Exhibit A—

Q. No, I said Exhibit 8, which is the whole book.

A. Yes.

[fol. 1521] A. Exhibit B is a summary of net income and undivided profits for the years ended December 31, 1949 and 1948, in comparison of The Times-Picayune Publishing Company.

Our certificate states that in our opinion the accompanying balance sheet and the summary of net income and undivided profits present fairly the financial position of the Company and the results of its operations for the year then ended.

Q. Well now, will you refer to the next page following Exhibit B of Exhibit 8.

A. Schedule 1?

Q. That is right. What is that sheet, Mr. Conroy?

A. This sheet is headed "Statement of profit from Operations before General and Administrative Expenses for the Years Ended December 31, 1949, 1948 in Comparison," with the heading above that of the name of the company, The Times-Picayune Publishing Company.

Q. Just what does that show? The page, itself?

A. The first columns are descriptive of the nature of operating revenues and the nature of operating expenses.

The next three columns are headed "Years Ended December 31, 1949, 1948" and "Increase and Decrease by Comparison of 1949 with 1948" and it shows in each of the classifications of revenues the aggregate revenues from advertising broken down into their respective general classifications, as such accounts are maintained on the Company's books.

As an illustration, Advertising is broken down into three

classifications of revenue: Retail, Classified, General, [fol. 1522] Comic Section, Roto Magazine, which is subdivided between Retail and General.

Q. Turn over to the next sheet of Exhibit 8.

Well now, what is Schedule 2 in Exhibit 8, Mr. Conroy?

A. Schedule 2 of Exhibit 8 is headed, "The Times-Picayune Publishing Company, General and Administrative Expenses for the Years Ended December 31, 1949 and 1948 in Comparison".

It contains on the left side a description of the expense accounts included in that statement, together with the amounts of each of such accounts compared, 1949 and 1948, with an increase and decrease column being shown for informative purposes.

Q. Well, in connection with making up the part of the Exhibit which you certified to, namely, the financial position of The Times-Picayune Publishing Company, what use do you make of the information in Schedule 2?

A. Schedule 2 is a subsidiary schedule supporting the aggregate general administrative expenses listed in Exhibit B, which is a summary of net income and undivided profits.

The purpose of the statement is to give further breakdown of the aggregate amount of $1,112,000 carried as General Administrative Expenses for the year ended December 31, 1949.

The Court: Let me see that sheet.

(Document handed to the Court.)

By Mr. Wilson:

Q. In any place in Exhibit 8, have you made any effort to divide or allocate the General Administrative Expenses as [fol. 1523] between various operations in The Times-Picayune Publishing Company?

A. We have not, but I do believe that I should explain that Schedule 2, at the bottom thereof, contains a summary of the Company's distribution of General and Administrative Expenses, the purpose of which—I mean that the purpose we had in mind in listing it was to relate it to the accounts that we show in Schedule 2.

Q. And the accounts which you show in Schedule 2 are

lumped together for the entire operation of The Times-Picayune Publishing Company, are they not?

A. That is correct.

Q. And the figure that you obtain by adding up all of those accounts is deducted from what?

A. It is deducted from the profit from operations before General Administrative Expenses as listed in Exhibit B, to arrive at what we determine the profit from operations.

Q. Well now, when you speak of profit from operations before deduction of General and Administrative Expenses, do you include all operations of The Times-Picayune Publishing Company, including the radio station, their investments and all other sources of income to the Company?

A. There is included in the line "Profit from Operations" the income from the raido station. There is not included the income from investments, such as dividends on stock and interest received, nor is there included other items of income which we customarily refer to in our reports to this client and to others as "Other Income Credits".

[fol. 1524] Q. Well now, the income from investments is treated in what way?

A. Income from investments is treated as an addition to the profit from operations.

Q. And the miscellaneous income that is under other income: How is that treated?

A. It is likewise treated as an addition to the profit from operations.

Q. What does the Other Income, besides Income from Investments, include, Mr. Conroy?

A. The largest item is described as Profit on Sale of Capital Assets.

There is another item called Miscellaneous, which includes various miscellaneous income not directly related to operations.

Q. Well, there has been an item referred to in this case as Income from Cuts, Mats and Metals.

How is that item treated, Mr. Conroy?

A. That item is included in the Total Operating Revenues of the Company.

Q. Of the Company?

A. Yes.

Q. Well now, will you turn to the page that follows Schedule 2, Mr. Conroy. No. One more.

Would you explain what Sub-Schedule 1 of Exhibit 8 purports to show?

[fol. 1525] A. Sub-Schedule 1 of Exhibit 8 is headed, "The Times-Picayune Publishing Company Departmental Expenses for the Years ended December 31, 1949 and 1948 and Comparison".

To the left side are the descriptions of the departmental expenses included in this statement. For example, there is the composing room and the press room and the stereotype room and photo-engraving room, maintenance, advertising, editorial and circulation. The amounts shown for the year 1949 are the aggregate expenses of each department divided by expense classifications as they are maintained on the company books.

Q. And what is the purpose of Sub-Schedule 1, Mr. Conroy?

A. We prepared Sub-Schedule 1 with the thought that the comparison of the expense accounts of each of the departments, such as composing room, by classification, such as pay roll and type machine supplies and other supplies, with the aggregate of such expenses for the preceding year would be of some value to management in the consideration of our report.

Q. Do you make any use of the figures shown in Sub-Schedule 1 in preparing the part of that report which your certification refers to?

A. Sub-Schedule 1 is a subsidiary schedule to the operating expenses included in Schedule 1 in the amount of $4,721,000 and, of course, is subtracted from the total operating revenues in arriving at the profit from operations. It is further brought over into Exhibit B.

Q. In what way?

[fol. 1526] A. In one total figure under the caption "Operating Expenses," under which appears the major classifications of expenses, such as newsprint, paper, ink, Roto Magazine production, departmental expenses and Radio Station WTPS.

Q. Now, refer back to—I believe it is Sub-Schedule 2. Is there not a Sub-Schedule 2 following Sub-Schedule 1?

Would you tell the Court what Sub-Schedule 2 is.

A. Sub-Schedule 2 is headed, "The Times-Picayune Publishing Company Operating Expenses Radio Station WTPS for the Years ended December 31, 1949 and 1948 in Comparison".

Here, as in the same manner as in Schedule 1 are described the expenses of the radio station that are included in this schedule for the years 1949, 1948, with a column to the right showing the increase and decrease in such expenses for informative purposes.

[fol. 1527] Q. Is there any provision made in that schedule for depreciation at the radio station?

A. There is not.

Q. And in setting up the radio station in each of the years, have you ever attempted to specially allocate any depreciation to the radio station?

A. It was my impression that the depreciation is included in general administrative expenses; that includes the depreciation on all properties of the Publishing Company.

Q. Including the radio station?

A. Including the radio station.

Q. Now, Mr. Conroy, I want you to examine that exhibit and tell me whether at any place in Government Exhibit 8 there is any showing of some kind of a break in revenues and operation expenses as between the New Orleans States and the Times-Picayune morning and Sunday editions?

A. There is certain information presented in Schedule 1.

Q. And just how is that information presented?

A. I have previously explained that the first three columns of this statement deal with the total operating revenues by classifications, such as advertising, circulation, radio and others, and operating expenses by departments, such as newsprint, roto magazine, departmental expenses, radio, all of which are totalled.

To the right we have three additional columns headed Distribution by Departments, Year ended December 31, [fol. 1528] 1949, over three columns, one headed The Times-Picayune, one headed New Orleans States and the third headed Radio Station, WTPS.

Q. Mr. Conroy, have you followed the method of includ-

ing that in your report in each year since you first began auditing the books of The Times-Picayune Publishing Company?

A. Perhaps not in quite the same form, but substantially the same information.

Q. Well, now, just tell the Court why you have done that.

A. The books of the Company show divisions of revenues to the Times-Picayune, New Orleans States, Radio Station WTPS. We have included these three columns in order to permit the Company to have a relationship of the figures included in our report to their own financial statement.

Q. Well, why should you follow the method of following their books and showing the information of the breaks in their books in your report?

A. In the presentation of this report, we were determining, as an example, the aggregate revenues from retail advertising, so that in order to permit of following the figures we used in our report, we listed the total for the Times-Picayune advertising retail revenues and the States advertising retail revenues from the accounts as maintained on the books, in order to arrive at the total advertising retail revenues, so that we may compare it with the preceding year, which is shown only in total.

Q. Well, now, do you make any use of the information [fol. 1529] showing the break between the States and the Times-Picayune in arriving at the final result to which you certify.

A. Of course, those figures form part of the result, but we are certifying to the net operating income and net income of The Times-Picayune Publishing Company from all sources.

Q. And is it of any concern to you as to how the break should be made between the States and the Times-Picayune if management desires a break made?

A. It is of no concern of ours.

Q. Have you, in preparing those reports, have you attempted to devise formulae by which the management would do that, or have you accepted the formulae adopted by the management and in use at the time you took over the auditing of the books?

A. We have accepted the allocations made by The Times-

Picayune Publishing Company between the Times-Picayune and States as they are on the books.

Q. Was it the opinion of Haskins & Sells that the allocations, as made by the Company, in any way accurately reflected the position of the States as against the position of the Times-Picayune?

A. We felt that the probably did not, but we were not interested in that.

Q. Well, did you make any recommendations to the Company in that connection?

A. In the year following our first examination of the Company's accounts, we did make some reference to the [fol. 1530] manner in which the Company was keeping its books.

Q. Now, I note that on May 18, 1945, you submitted a report, which has been marked Government Exhibit 126. I ask you to examine that report, and tell me whether that is what you had reference to when you said that you had submitted a recommendation to the Company?

A. Yes.

Q. And I note on page 5 of the report, it says:

> "If it is desired that the Company's records reflect separately the net income of the Times-Picayune and New Orleans States, we suggest for the consideration of the management the advisability of the Auditing Department making a study to determine the basis of allocation of all operating expenses to the operations of the two newspapers."

Mr. Conroy, what action, if any, was taken by The Times-Picayune Publishing Company on that recommendation?

A. No action was taken by The Times-Picayune Publishing Company.

Q. Did you have any discussion with the officials of the Company as to whether a study should be made?

A. I did.

Q. And were you advised as to why they did not care to follow out your recommendation?

A. Yes, I was.

Q. And what was the reason?

[fol. 1531] A. The reason was that management was satisfied with the manner in which it was being done.

Mr. Flurry: If the Court please, we object on the ground that this is hearsay.

Mr. Wilson: It is the reason of the Company, the reason they gave him for not wanting to change them. I don't see that this is hearsay.

The Court: I will overrule the objection on the ground that it is hearsay.

Mr. Flurry: May it please the Court, we think the witness should show who the conversations were had with and when they were had.

By Mr. Wilson:

Q. Mr. Conroy, in the first place, when was it that any officials of the Company gave you their reasons for not changing?

A. I am unable to state the date, but it is my recollection that we made reports to the Company suggesting changes in the internal control of the Company.

Following the rendition of these reports, it was customary to have a meeting with officers of The Times-Picayune Publishing Company. I recall that I attended several of such meetings at which the President, Mr. Tims, Mr. Phelps—Mr. Esmond Phelps—Mr. Yorke Nicholson, Mr. Leonard Nicholson, Mr. Adams, and perhaps others, were present.

Q. Mr. Alvin Howard?

[fol. 1532] A. I didn't know Mr. Alvin Howard.

Q. Well, now, at these meetings, was there a reason given you for not changing the methods of keeping their books to follow out your recommendation?

A. As I stated, our report was devoted primarily to recommendations for improvement in the Company's system of internal control. I have a recollection that when we reached this stage of our suggestions, I was asked whether the adoption of that suggestion would, in any way, improve the internal control of the Company, and my reply to that was no.

I was then asked would it make a difference in the rendition of our annual report if it did not change. My answer

to that was no, and the statement was then made that the management believed that it would go along with what it was doing.

[fol. 1533] By Mr. Wilson:

Q. Well then, from your statement I gather that the books, as kept at that time and as presently kept by The Times-Picayune Publishing Company, are books of internal control?

A. Well, the term "internal control" is a rather lengthy definition to give, but the Company must maintain a general ledger and many other records, and when we refer to "internal control" we have in mind that the system of accounts affords management the best possible check that they are receiving all of the revenues to which they are entitled and that proper safeguards are placed over disbursements before such disbursements are made.

Q. When you make your audits do you take the reports which the Company draws from the books as your basic information, or do you go to the books of the Company as distinguished from the reports?

A. We go directly to the general books of the Company and to such other records of the Company as are necessary to permit us to have satisfaction respecting the operating revenues and expenses of the Company.

Q. Well, do you have access to all of the books of the Company in making your audits?

A. We have access to any and all records that are deemed necessary for our examination by us in connection with the examination of the accounts of The Times-Picayune Publishing Company.

Q. Does The Times-Picayune Publishing Company, in any way, direct you as to how your audit shall be made?

A. They do not.

[fol. 1534] Q. Mr. Conroy, you have had an opportunity to examine the books of the Company, or your office has, for each of the years since 1944. You have before you Government's Exhibits 6, 7 and 8, showing the operations of The Times-Picayune Publishing Company for the years, '47, '48, and '49, and, as I understand it, you have examined and made your report on the audit of The Times-Picayune

Publishing Company for 1950, have you not?

A. We have; yes.

Q. Mr. Conroy, from the examination which you have made of the books and records of The Times-Picayune Publishing Company and the audits which you have submitted to the Company, in your opinion, as an Accountant, in each of the years from '47 through 1950, were the operations of the New Orleans States, six-day evening, as distinguished from the Times-Picayune, morning and Sunday, carried on at a profit or at a loss?

A. Well, our reports disclose the income from operations of the entire Publishing Company. The only other indication of results of operations of the States is shown on Schedule I, which shows the distribution by departments and shows a net income of the States for the year 1949, before General and Administrative Expenses of $247,838.69.

Q. Well now, you told us that you had made certain recommendations as to obtaining a more accurate breakdown if that was what the Company wanted. From the information on which you made those recommendations was it your opinion, as an Accountant, that if those were followed out there would be any reason to believe that that [fol. 1535] would result in the figure for the States being a loss instead of a profit?

A. No.

Q. Did you make any report to the Company or have any conversations with anybody in the Company in which you suggested to anyone there that the six-day daily States might be operated at a loss?

A. No.

Q. Well, did anyone in the Company, at any time, suggest to you that that was a possibility?

A. No.

Q. Now, Mr. Conroy, were you asked to make further studies of the books of The Times-Picayune Publishing Company in connection with this law suit?

A. We were.

Q. And who requested that of you?

A. Mr. Esmond Phelps, in September, 1950.

Q. Did you endeavor to go back and consider the books of The Times-Picayune Publishing Company for the years

'48, '49, and '50, to see what you could do in making a new study of those books?

A. We did.

Q. Were your efforts in that connection directed to attempting to make some kind of a study which would show a breakdown between the six-day daily States, the six-day daily Times-Picayune, and the Sunday paper?

A. They were.

Q. What success did you have in carrying out those efforts?

[fol. 1536] A. Well, we were able to prepare statements on a changed basis of allocating revenues between the six-day paper, six-day afternoon paper, the six-day morning paper, and the Sunday paper, and using various methods of allocation of expenses we were able to allocate expenses to the three with, in some cases, a need to use some allocations that were arbitrary.

Q. That is, you had to take arbitrary allocations?

A. Yes.

Q. And if I understand you correctly, you used various formulae in an attempt to make an estimate as between the three editions?

A. We did the best we could with the situation, with due regard to the fact that allocations can never be exactly correct, particularly when there is an absence of information with which to apply to the ratio that might be considered the generally accepted method of allocation.

Q. Well, did you have available information which would enable you to obtain precise results in making the allocations of expenses?

A. I think the answer to that would be that under no system of allocation of expenses between several departments do I think that any accountant, with good grace, could insist that any one set of formulae is correct, or better than another.

Q. Well, were you able to carry this method, or the method that you were using of allocating expenses; were you able to carry that through to all expenses for the three editions?

A. Well we could not carry usual methods of allocations to the group of expenses known as General Adininistrative

[fol. 1537] Expenses because we could not find any satisfactory basis on which to apportion such expenses.

Q. Well now, would you just explain why that particular category has no satisfactory basis for allocation, and by "General" and "Administrative" do you include "Office" too? That is, just what do you include in General and Administrative Expenses?

A. May I refer to Exhibit 8?

Q. Refer to any notes you care to, sir.

A. It includes ~~Officers' Salaries, Directors~~' Fees, Legal Fees, Pensions to Former Employees, Contributions, Accountants' Fees, Dues to Various Associations, Salaries of the Office, Credit Department and Auditing Department, Real Estate and Personal Property Taxes, Corporation Franchise Taxes, Depreciation, Doubtful Accounts.

In my opinion expenses of the nature of those are expenses of the business as a whole and no elaborate system of apportionment will ever change that: that those are expenses of the business as a whole.

Q. Well, would you explain just a little further what you mean by "expenses of the business as a whole?"

A. Well, these expenses relate to all of the operations and management of The Times-Picayune Publishing Company. They relate to the management of the newspapers, the radio, their investments, their general planning and thinking for the future, their building programs, their expansion programs, the management of their subsidiary company, and, in general, it is my feeling that this type of expense is not customarily allocated to departments.

Q. Well now, let's explore a little farther: How about [fol. 1538] Officers? Why can't you allocate Officers' Salaries?

A. Well, certainly we could not do it on the basis of any time studies because time is not the essence of determination in the salary of officers, nor do they measure their time that they spend in the performance of their duties by departments.

Does that answer your question?

A. Take some specific examples. For instance, you are familiar with the operations over there, and you know who

the officers are. Let's have some concrete examples of what you are saying here, now.

A. Well, I wouldn't——

Q. Take Mr. Tims, for example.

A. I would not know how to allocate the salary of Mr. Tims to various departments or operations of The Times-Picayune Publishing Company. I know that he devotes time to the entire operation of the Publishing Company, including assistance and overall policies, sitting as a member of the Board of Directors, and deciding those policies, helping in the management of the Electric Delivery Service. I just would not know where to start to allocate Mr. Tims' salary to various departments, and I normally, in accounting matters, would see no useful purpose being served by such an allocation.

Q. Well now, you told us that you attempted this method of allocation and when your arrived at Administrative and General Expenses you were not able to make any allocation. Did you arrive at a result on the work you had done? Did you reach a result as to what would be, in your opinion, [fol. 1539] a net position for the paper before the dedication of Administrative and General Expenses?

A. Yes, we did.

Q. And that, as I understand it, was the best you were able to do on what information was available by applying whatever formulae you thought best, or where you had to, in applying an arbitrary formula. Is that right?

A. Yes.

Q. Now, what result did you arrive at for 1947 before deduction of Administrative and Office Expenses?

A. May I refer to a note in my pocket?

Q. Yes, sir: any papers you care to.

Mr. Flurry: If it please the Court, we would like to suggest the witness might refer to the report he made.

Mr. Wilson: I am asking for what result.

The Court: Are these the reports he made?

Mr. Wilson: I am asking what result he arrived at.

The Court: He is refreshing his memory?

A. Yes.

Mr. Wilson: He is refreshing his memory.

A. It is a figure of some size.

May I have the question again?

By Mr. Wilson:

Q. What result did you arrive at for 1947 before deduction of Administrative and General Expense?

[fol. 1549] A. Well, we made no additional studies with respect to operations for the year 1947.

Q. Well, 1948; I'm sorry. Give me the figures for 1948.

A. For the Times-Picayune, morning, $1,466,390.36; Sunday, $746,646.06. Total, Times-Picayune, $2,213,036.42.

For the New Orleans States, evening, $227,524.37; Sunday, $402,040.17. Total, States, $629,564.54.

Radio, loss, $149,041.96. Total profit from operations, before General and Administrative Expenses, of $2,693,559.00.

Q. Well now, for the year 1949, would you give me the same information, showing the net position before deduction of General Expense?

A. The Times-Picayune, morning, $1,664,223.31; Sunday, $790,910.51; Total, Times-Picayune, $2,455,133.82; New Orleans States, evening, $169,952.61; Sunday $425,874.88; Total, States, $595,827.49; Radio, Loss, $92,409.08; Total, $2,059,552.23.

Q. Mr. Conroy, would you give me the same information for the year 1950, giving me the net position prior to deduction of Administrative and General Expense?

A. The Times-Picayune, morning, $1,702,086.61; Sunday, $636,942.27; Total, Times-Picayune, $2,339,028.88; the New Orleans States, evening, $138,171.25; Sunday, $342,968.91; Total, States, $481,140.16; Radio, Loss, $90,686.37; Total Profit from Operations before General and Administrative Expenses, $2,729,482.67.

Q. Mr. Conroy, I note from your answer that you have allocated Sunday revenues as between the New Orleans States and the Times-Picayune. Is that right?

A. That is correct.

Q. Well, Mr. Conroy, in your opinion as an accountant, in [fol. 1541] accounting a newspaper that has a seven-day

operation, is it proper to include all seven days in determining the position of that newspaper?

A. All seven days and every day in the month.

Q. Well now, from your examination of the books and records of The Times-Picayune Publishing Company, does the New Orleans States published six days in the evening make any contribution to the Times-Picayune New Orleans States published on Sunday?

Mr. Flurry: We object to that, Your Honor. We have admitted that if the daily paper is entitled to income from the Sunday that there is no loss.

The only question is whether or not there is a loss on the daily paper's operations.

Mr. Wilson: My question is directed to the issue of whether it should be included. I want his opinion as an accountant.

The Court: Would the accountant know what the contribution of one paper was to the other?

Mr. Wilson: I suppose that if he doesn't know, he will tell me so. I think he would know from the books as to whether paper were contributing to some part of the expense, say of features running through it, comics and that sort of things, whether that went into there, whether there was any circulation that was handled over there, that sort of thing.

If his information is inadequate, I am sure he will say so.

Mr. Flurry: I don't think the witness has been qualified as an expert on the newspaper business.

Mr. Wilson: I am asking him as an accountant.

[fol. 1542] The Court: I will limit it to his knowledge as an accountant.

Mr. Wilson: Read the question.

(The Reporter read the last question.)

A. I think it does.

By Mr. Wilson:

Q. What contribution is that, Mr. Conroy?

A. Well, the States has evening circulation and, as an accountant, it would seem to me that the evening circulation of the States contributes to the Sunday paper.

Q. And how about any separate circulation that is only circulation of the States and is not duplicated by circulation of the Times-Picayune?

A. As an accountant, it would seem to me that the circulation of the States would have a bearing on the Sunday circulation of the Times-Picayune.

Q. Well now, in connection with all of the studies that you have made over there, have you found that there is any duplication of personnel as between the evening States and the paper that comes out on Sunday called the Times-Picayune New Orleans States?

A. Yes. We did. We found that in the Editorial Department that certain of the staff that is charged on the books to the States contributes columns to the Times-Picayune New Orleans States on Sunday. We have found that certain of the mail room pay roll is devoted to the handling of the Sunday paper. There are a number of instances of that situation in the Company.

[fol. 1543] Q. Well, in your opinion as an accountant, should one, in attempting to determine whether the New Orleans States is being operated at a profit or a loss, allocate a portion of the Sunday revenue to the New Orleans States' operations?

A. I should think so.

Q. And what basis would you use for making such an allocation?

A. Well, it would have to be studied, but in this instant, after a study of the figures, we thought that a fair method would be the circulation of each of the two newspapers.

Q. That is, you would take the morning circulation six days and evening circulation six days——

A. And total the two and then determine the relationship of the morning circulation to the total morning and evening circulation, the evening circulation ratio to the total of the morning and evening circulation.

Q. And what percentage ratio did that give you, Mr. Conroy?

A. It gave us a ratio of thirty-five per cent to the States, sixty-five per cent for the Times-Picayune.

Q. Mr. Conroy, in the figures which you read to me, you

stated a net position before deduction of operating—not of operating, but of administrative and general expenses. In arriving at that result, had you included in your revenues all of the revenues of The Times-Picayune Publishing Company, that is including income from investments?

A. No.

Q. Well, what revenues were excluded from those figures? [fol. 1544] A. The revenues excluded would have been those that we include under other income credits, such as interest on investments and dividends, on stock profit, on the sales of capital assets, and other items of a similar nature.

Q. Well, is it your opinion that those should be treated in the same way as you treated administrative and general expenses, that is, considered after you have gotten an operating position exclusive of administrative and general expenses?

A. I am not so sure that I understand the question, Mr. Wilson.

Q. I am sure it is my fault, Mr. Conroy. I am having a little difficulty with that one myself.

As an accountant, do you treat income, such as you have listed under Other Income, which includes the income from investments, interest, capital gains, etc., do you treat those items as applying to the Company as a whole in the same way that you treated administrative and general expenses as applying to the Company as a whole?

A. That is correct.

Q. Well now, Mr. Conroy, there is a vast amount of revenue coming in every day, is there not, over at The Times-Picayune Publishing Company?

A. There is.

Q. Now who received that revenue?

A. The Times-Picayune Publishing Company.

Q. And who pays the bills of The Times-Picayune Publishing Company?

[fol. 1545] A. The Times-Picayune Publishing Company.

Q. And who pays the salaries of the people that work over at 601 North Street?

A. The Times-Picayune Publishing Company.

Q. Is there anything in the books of The Times-Picayune Publishing Company that would lead you to believe that the States as a separate organization or the Times-Picayune as a separate organization got those revenues or was responsible for those bills? In other words, is it all The Times-Picayune Publishing Company that has to take the money and pay the bills?

A. It is The Times-Picayune Publishing Company.

Q. In connection with auditing The Times-Picayune Publishing Company, do you have access to their bank accounts and their safe deposit boxes, Mr. Conroy, or the contents thereof?

A. We have no access to their bank account.

Q. Well, I mean are those records made available to you?

A. The only time we visit the safety deposit box is in connection with the inspection of the securities owned by the Company.

Q. Are there any bank accounts or safe deposit boxes in the name of the New Orleans States?

A. No.

Q. Are all of the bank accounts and the safe deposit boxes in the name of The Times-Picayune Publishing Company?

A. To the best of my knowledge, they are.

Q. Mr. Conroy, I hand you a document which I have [fol. 1546] marked Defendant's Exhibit 20. I ask you if, at my request, your office prepared a breakdown of the income shown on your 1947, '48 and '49—no, '48, '49 and '50 reports, under the heading Cuts, Mats and Metals?

A. Yes, we did.

(The document was marked Defendant's Exhibit 20 at this time for identification.)

Q. Referring again to that exhibit, is that income for those years the income which is broken down by the various departments starting with the composing room and ending with maintenance?

A. Yes.

Q. Would you just tell the Court what the source of revenue is for each of those departments?

A. The Company has on its books one account styled Income from Cuts, Mats and Metals Sold, and the account

reflected for the year '48 an aggregate of $187,838.63. In order to get a breakdown of this revenue, it was necessary that one of our accountants analyze all of the entries in the account in order to arrive at the distribution by departments.

In arriving at the distribution by departments, we, of course, had to become familiar with the nature of the income. If you are asking me to explain each one of the credits, the composing room, for example, covers services rendered by the composing room for printing special sheets for advertisers; the income from the stereotype room covers mats and plates made for advertisers; the photo engraving department covers income from cuts made for ad [fol. 1547] vertisers; the mail room is for mailing special posters of some kind for advertisers. The amount credited to advertising revenues is primarily from the sale of photographs, as I recall it. I don't recall the exact nature of the others, but I do recall that each of them are income from a source applicable to those departments on this sheet.

Q. Mr. Conroy, when you said "photographs" under advertising, did you mean photographs or cuts made for advertisers for inclusion in their ads?

A. Yes, for inclusion in their ads.

Q. And under Editorial, that is the sale of photographs from the society page, things like that, is it not?

A. Yes, that is right.

Q. And Maintenance is some scrap metal other than zinc, is it not?

A. That is right.

Q. Now, that is broken down for each of the three years, '48, '49 and '50 in exactly the same way, is it not?

A. It is.

Q. And correctly states the items of income for the various departments for those years?

A. That is correct.

Q. Now, I note down at the bottom, we have an item, a separate item, Waste Paper Sold and Claims. Will you just tell the Court what that is?

A. The item Waste Paper Sold is revenue that the Com- [fol. 1548] pany secured from the sale of waste newsprint;

and Claims represents the amounts of claims made against the shippers of newsprint for damaged newsprint.

Q. You have stated the amounts for each of the three years, 1948, '49 and '50, have you not?

A. I did so on the income from Cuts, Mats and Metals, I believe. I can't recall. Shall I repeat them?

Q. No, I say you have stated—no, what I meant was you have shown on this exhibit the revenue for each of the three years, have you not?

A. Yes.

Q. And you have correctly shown them as reflected by the Company's books?

A. After examination by us, yes.

Mr. Wilson: I offer Defendant's Exhibit 20.

The Court: It will be admitted.

(The document marked "D-20" for identification, was received in evidence.)

By Mr. Wilson:

Q. Mr. Conroy, would you refer to Defendant's Exhibit—I mean Government Exhibit 8 which you have there before you? That is your statement for the year—that is the Haskins & Sells' audit for the year 1949, is that correct?

A. That is correct.

Q. Well, examine that audit and tell me where there is [fol. 1549] reflected in there the revenues as shown on Defendant's Exhibit 20 from waste paper and claims?

A. It is included in Exhibit B, Schedule 1, as the reduction of newsprint paper.

Q. In Schedule 1, Exhibit A, you say it is shown there as a reduction in the cost of newsprint paper. Is that shown on the Company's books as a deduction from the total amount of newsprint paper purchased by The Times-Picayune Publishing Company?

A. The presentation of our report, Newsprint Paper, we have the total cost of newsprint paper, and that cost has been reduced by the sales and claims.

Q. Well, did you arrive at that total cost by totalling the

newsprint charged on the books of the Company to the States, and the newsprint charged on the books to The Times-Picayune Publishing Company?

A. We did.

Q. And isn't it a fact, that the Company, in preparing the information from which you obtained this, made their deduction for revenues from waste paper and claims solely from the cost of newsprint which they, on their books, allocated to the Times-Picayune morning and Sunday?

A. That is correct, for the year 1949.

The Court: Court will be at recess for ten minutes.

(Short recess.)

The Court: Proceed.

Mr. Wilson: No further questions, Your Honor.

[fol. 1550] Cross examination.

By Mr. Flurry:

Q. Mr. Conroy, did you make the Company's Income Tax report for the years 1947, 1948, 1949 and 1950?

A. Yes. Our firm did them.

Q. Did you use for that purpose your audit as shown in Government Exhibits 6, 7, 8 and also your audit report for 1950 which the Government did not have?

A. Yes.

Q. Now, I believe you stated that you had made a study under your employment beginning, I believe you said in September of last year, of the Company's records with respect to determining the operating results of the various papers?

A. We were first consulted in September, 1950, that is correct.

Q. When did you begin that study?

A. Shortly after that.

Q. And when did you complete that study?

A. We completed it in the early days of May, as I remember it, but we were not working on it all of that time, Mr. Flurry.

Q. In making that study, did you compile certain work sheets?

A. Yes.

Q. Schedules?

A. Yes.

Q. Do you have those schedules with you or in the Court Room?

[fol. 1551] A. Well, I don't have them. I don't know whether we have all those schedules in the Court Room or not, Mr. Flurry.

Q. You don't know whether or not Mr. Cohen has them?

A. He may have them.

Q. Now, when did you first see the Government's tabulation with respect to accounting?

A. It hasn't been very long ago.

Q. Was your study completed since that time?

A. Our study has been completed since that time.

Mr. Flurry: May it please the Court, we would like to have the witness ascertain whether or not they have in the Court Room the work sheets and so forth related to this study, in order that the witness may refresh his recollection from those work sheets.

The Court: Do you have those sheets available, Mr. Wilson?

Mr. Wilson: They are all here, yes, sir.

The Court: Well, let us first find out whether his memory needs refreshing.

By Mr. Flurry:

Q. Have you, in your study and the schedules made in connection with that study, changed a number of the figures from those shown in Government Exhibits 6, 7 and 8, which were your current audit for the years 1947, '48 and '49? Will you refer to Government Exhibits 6, 7 and 8 first.

A. Mr. Flurry, in making that special study, we did [fol. 1552] change a number of the figures that are shown in these three exhibits.

Q. Were those changes the result of simply shifting of figures from one place in Government Exhibits 6, 7 and 8, to another account shown in your work sheets connected with your study?

A. Well, the changes were primarily those necessary to allocate between the States evening, the Times-Picayune morning and the Sunday-Times-Picayune-States, the aggregate revenues and expenses as disclosed in Government Exhibits 6, 7 and 8.

Q. If I understand you correctly, you not only shifted some accounts, but you also reallocated those accounts to the allocation shown in the Company's books, is that true?

A. In making the study, Mr. Flurry, we found that certain revenues included in the Times-Picayune were Sunday revenues. We found a similar situation for the States. As to the operating expenses, we dealt each time with each account on the books, and where the expense on the books was correctly charged between the Times-Picayune and the States, we made no change, but in other instances, we did allocate to the three operations certain of the expenses, which necessarily brought about a different amount than had been charged on the books to the States and to the Times-Picayune.

The Court: Let me make this inquiry: in carrying out this theory, did he not do exactly the same thing that the Government accountants did in developing their theory?

Mr. Flurry: That is what we think.

The Court: Didn't that just amount to shifting figures, [fol. 1553] too? I want to be sure if that is the situation. He did not change the books of the Company—I mean the books are still the way they were, as I understand it?

Mr. Flurry: Yes, Your Honor. What we are getting at, the Government couldn't change the figures contained in the various accounts in the books. What we are getting at here is whether or not he has changed those figures; in other words, has he changed some amounts from one account to another account?

The Court: On the books of the Company?

Mr. Flurry: No, in his studies, his schedules made in connection with his study.

The Court: I see. All right.

Mr. Kramer: If the Court please, there is absolutely no contention of fraud on the part of the Government.

The Court: I hadn't understood that there was.

By Mr. Flurry:

Q. Now, Mr. Conway——

A. Conroy, Sir.

Q. I beg your pardon, Mr. Conroy. In your direct examination you stated that you had undertaken to make certain allocations with respect to these various expenses. Can you tell us the bases on which these allocations were made?

A. Yes, I think generally I can describe the bases that we used in making the study to which I believe you are referring.

Q. I will ask you to refer to Government Exhibit 8. Do [fol. 1554] you have Government Exhibit 8 there?

A. Yes, I do have it.

Q. Turn first to Exhibit B of Government Exhibit 8.

A. I have it.

Q. You show in Exhibit B the operating revenues under the classification of Advertising, Circulation, Radio and others. Did you in your study undertake to make any breakdown of those revenues as between the daily States' operations and the other operations?

A. We did.

Q. Now, referring to Schedule 1 of Exhibit "G-8", have you changed the allocation to the New Orleans States opposite Advertising, Retail, from that shown in Government Exhibit 8 in your recent study?

A. I don't believe there was any change in those figures.

The Court: As I understand it, the columns on the right, the three columns farthest to the right, reflect the books of the Company?

A. That is right, Your Honor.

The Court: The distribution made on the books?

A. That is correct, Your Honor.

By Mr. Flurry:

Q. Now, in Schedule 1, Advertising, Classified, did you use a different figure in your study to that shown under the New Orleans States in Schedule 1?

A. Yes, we did.

Q. Do you recall what figure you used for that?

[fol. 1555] A. I don't recall the figure, but on the books, twenty per cent of the classified revenues were allocated to the States, plus the Over-the-River classified advertising.

The Court: Does that include any of the Sunday?

A. It included none of the Sunday. And in our special study, we changed that figure.

By Mr. Flurry:

Q. Do you know whether or not you have any work papers which would refresh your recollection as to the amount of the change?

A. Yes, I should think they are here.

Q. Would you refer to those?

A. I don't have them with me up here.

(Mr. Wilson handing the witness the work sheets.)

The Court: Is it the Government's theory that all of the Sunday revenue is allocable to the Picayune, is that right?

Mr. Flurry: That is right, Your Honor, on the theory that the Daily States is a different paper from the morning and Sunday.

The Court: Suppose the Publishing Company calls the Sunday paper the States, and say that the Times-Picayune is published six days morning and the States six days evening and Sunday morning, would it make any difference?

Mr. Kramer: It wouldn't make any different in our position, Your Honor. If we could approach the bench with counsel, we might save some time——

The Court: Because they call it the Times-Picayune on [fol. 1556] Sunday, all the revenues go to the Times-Picayune. If they call it the States on Sunday, it wouldn't make any difference?

Mr. Kramer: No, You Honor. Our contention is twofold. I have already made the one argument, and the other argument I haven't yet talked to Your Honor about. It is our position that apart from what their intent in the books and their theory was before the case was filed, that when you are trying to find out the effect of an integrated operation or a consolidated operation where it is competing with a competitor that does not enjoy the advantage of that con-

solidation, you compare the operation of the consolidated company for the period of time that the competitor is operating.

In other words, you can't show what the effect on the competitor of advertising rates for seven days is to determine the effect on a six day operation. We will go into that at an appropriate time, but I would like—if we might, counsel might approach the bench——

The Court: I have given it some thought, and I wondered if it wouldn't work both ways. It seems to me that it is just an occasion of shifting some figures or applying different standards, and you can get almost any result that you are looking for.

Mr. Kramer: If the Court please, perhaps I should make this statement: perhaps the defendants will concede that if you allocate none of the Sunday revenue to the six day States, and if you allocate the unallocated expenses to general and administrative, the States then would have a loss. If they will concede that, we can make some progress.

[fol. 1557] The Court: Well, if you allocate the profits from the Sunday paper to the Times-Picayune because it is called the Times-Picayune, why not allocate part of it to the States because it is also called the States?

Mr. Kramer: We don't allocate the Sunday profits to the Picayune. We say you can allocate them separately to three papers, as charged in the Complaint, or you can allocate all of the Sunday to the morning paper, which is the way they did it before this suit was filed.

In other words, there are three possible ways of coming out, three separate columns or two columns, or——

The Court: Or no columns?

Mr. Kramer: Under no circumstances can there be no columns because that would be equivalent to demurring to——

The Court: In other words, if they had made no allocation whatever, if they had made no attempt whatever to segregate their costs, it would still be the Government's position that the Government should be able to go back now and segregate those costs for the purpose of showing the result of each operation, although the owners of the paper were not themselves interested in that?

Mr. Kramer: I suppose that the Government would have the right to do it, but I think that its case would be conceivably more difficult because you would have no possible way of arguing about what was done or must be done.

The Court: I see. That is the Government's position?

Mr. Kramer: That is all that I can answer.

[fol. 1558] Mr. Wilson: Just so my silence will not indicate consent, we will not concede to what Mr. Kramer suggests.

Mr. Kramer: Then we will have to proceed in our own way. I hope Your Honor will continue to show the marvelous patience you have already, because it may take some time.

The Court: I was not trying to hurry you. I just wanted some assistance as we went along. Proceed.

A. May I have the question repeated, Mr. Flurry? Then I believe I can answer it.—

[fol. 1559] By Mr. Flurry:

Q. Will you please state what the change in the figure for Advertising, Classified Revenues, for the New Orleans States, made in your study as compared to what is set forth in Schedule I of Government Exhibit 8?

A. Schedule I of Government Exhibit 8: The Classified Advertising revenues in the column under the heading "New Orleans States" is $317,061.66. As a result of our studies that was increased to $462,635.28.

Q. Now, what was the reason for that change, Mr. Conroy?

A. The reason for the change was because on the books the Company allocated twenty per cent of the Classified revenues to the States. We reallocated all Classified revenues, morning, evening, and Sunday, on the basis of the respective circulation of each edition of the papers.

Q. Why did you consider circulation as a good basis for that reapportionment of the revenues?

A. Because advertising rates are based on circulation.

Q. Do you know whether or not Classified Advertising is sold under a unit combination rate?

A. Yes, I am familiar with that.

Q. Will you explain your previous answer under the assumption that classified advertising rates are sold in unit combination?

A. Well, the aggregate rate is based on the aggregate circulation of the papers, and it, therefore, seems proper, [fol. 1560] in my opinion, that the Classified revenues should be apportioned in relation to the circulation of the three editions of the papers.

Q. Did you take into consideration the ratio of the rate in the States to the rate in the morning paper prior to the unit combination?

A. No.

Q. Now, on General Advertising revenues, Mr. Conroy, did you change that figure in your study to what it was in Government Exhibit 8, Schedule I?

A. We did not.

Q. Did you credit any of the revenues from the Comic Section and Roto Magazine to the States?

A. We credited that to the Sunday paper.

Q. And in breaking up the Sunday revenues and expenses, did you credit any of the expenses or revenues from Roto Magazine to the States?

A. After determining the income and expenses applicable to the Sunday paper of the Times-Picayune-New Orleans States, we allocated each of them, revenues and expenses, in the ratios 35 to the States, 65 per cent to the Times-Picayune.

Q. Now, did you deduct from the total Advertising revenues the amounts paid out in discounts and allowances and Agents' Commissions on advertising?

A. We did.

Q. Did you, in 1949, make any allocation to the States, evening, on the basis of Agents' Commissions paid on advertising?

[fol. 1561] A. No. But the commissions are charged to each of the editions in the same ratio that the revenues were applied.

Q. Look at your work papers and determine whether or not, for the year 1949, you did allocate to the evening States the Agents' Commissions on the basis of the revenues received.

A. In making the study, Mr. Flurry, we considered each type of allowance in the account and each type of discount in the account, and——

Q. Pardon me. I am referring only to Agents' Commissions.

A. There is no Agents' Commissions charged.

Q. Now, are you familiar with the term "Agents' Commission," as to just what that is?

A. Yes.

Q. To what Advertising does that apply?

A. That applies to General Advertising.

Q. Do you know whether or not Agents' Commissions is based upon a percentage of the advertising sold for the papers?

A. I am not sure that I can answer that question, Mr. Flurry.

Q. You don't know whether or not Agents' Commissions are paid on the basis of a percentage of the value of the advertising? Dollar value of the advertising?

A. I am not sure that I can answer that question, but I can say that the Agents' Commissions have been used as a reduction of the General Advertising revenues for the States.

Q. Have you used Agents' Commissions in 1949 as a reduction of Total Advertising Revennes in the States, daily?

[fol. 7562] A. Whatever the amount of Agents' Commissions was applicable to the States' General Advertising is deducted from the States' General Advertising.

Q. Will you state from your work papers how much was deducted for the States, daily, from the Total Advertising Revenues on account of Agents' Commissions?

A. There is none shown on the papers, Mr. Flurry, for the reason that the entry for the Agents' Commissions, in effect, is a reduction of the revenues.

The Court: Did you apply the same percentage to that? 35 per cent?

A. Your Honor, the entries which the Company makes on its books are net of the commission which goes to the agent; and in the same proportion.

The Court: I see.

So you applied the 35 to the net and that took care of it?

A. If that was the proper ratio.

The Court: You didn't apply the 35 per cent generally, though, did you?

A. Oh, no. That was only between the morning edition, the Sunday Times-Picayune and New Orleans States. It was on that basis.

The Court: Proceed.

[fol. 1563] By Mr. Flurry:

Q. Did you handle the deductions for agents' commissions with respect to the Times-Picayune, daily, in the same manner as you did the New Orleans States, daily?

A. Mr. Flurry, I can't recall, exactly but, in a review, it was my impression that in each instance the accounts were uniformly handled. In other words, agents' commissions applicable to the States and Picayune were handled in the same manner.

Q. Isn't it a fact, Mr. Conroy, that in working out your final results as to profit from operations before General and Administrative expenses that under the Times-Picayune, daily calculations, you allocated a percentage of agents' commissions which was deducted from your total advertising revenues; and, in the case of the daily States, you took the total revenues from advertising and did not deduct any agents' commissions from that revenue?

A. I am sure that is not so.

Mr. Wilson: May I have that question?

The Court: Read the question and the answer.

(The Reporter read the last question and answer.)

By Mr. Flurry:

Q. Did you make up a compilation of your showing from that study?

A. Yes. We did.

Q. Do you know whether or not copies of that were furnished to the Government?

[fol. 1564] A. Well, we furnished them to counsel and to The Times-Picayune Publishing Company.

Q. I show you a document which I hold in my hand and

ask you if that is the compilation which you made from your study.

(Document handed to the witness.)

Mr. Wilson: I will stipulate, Your Honor, that the Defendants furnished copies of the compilation to Mr. Flurry several days ago.

Mr. Kramer: Will counsel stipulate that that was last week?

Mr. Wilson: Yes. That is several days ago.

Mr. Phelps: Which was about a week ago, not just last week.

By Mr. Flurry:

Q. I will ask you to examine that compilation, Mr. Conroy, and state whether or not that refreshes your recollection as to whether or not you did or did not deduct any agents' commissions from the advertising revenues under the column "Daily States".

A. In this exhibit which you are showing me, Mr. Flurry, there is no amount of agents' commissions deducted in the column headed "New Orleans States, daily".

Q. Would that have affected your final results in the profits or losses of the States, daily, as shown from your study?

A. It would not have changed the study we made, for the reason that it is my recollection that we determined in this [fol. 1565] instance that none were allocable to the States.

Q. Do you mean to say that the daily States carried no General Advertising in 1949?

A. The daily States did carry General Advertising in 1949.

Q. Did not the company pay agents' commissions on that advertising the same as General Advertising carried in the morning paper?

A. Mr. Flurry, I am sure that commissions were paid on advertising for The Times-Picayune Publishing Company. As to the specific reasons at this time as to why there is no agents commisssion included in the States, I should have to refresh my memory. I cannot recall, except that in each instance where I reviewed the papers to determine whether the item applicable to the States had been charged to the

States, and it is my recollection in that instance none was chargeable.

Q. I ask you, Mr. Conroy, as an accountant, if you were given the assignment of determining the operating profit or loss of the States, evening, and assuming that the agents' commissions are paid on the value of the advertising, would it not be proper to charge the States with agents' commissions for General Advertising carried in the States?

A. Mr. Flurry, if I were given such an assignment, I would, from the books of the Company, determine whether the amounts of agents' commissions charged on the books had been charged properly between the operations that I am examining, and it is my recollection that it was so here.

Q. In that examination, would you determine for yourself whether or not the General Advertising upon which [fol. 1566] agents' commissions had been paid were carried in the evening paper?

A. Well, as I said, to specifically refer to the paper, I do not have it, but I shall be glad to refresh my memory on that question, Mr. Flurry, and answer it.

Q. Will you do that at the noon hour, please?

A. Am I permitted to ask a question? I have told him I would be glad to refresh my memory by referring to the papers.

Mr. Cohen, will you get me those papers?

The Court: You can do that during the noon recess. You will have a recess for an hour and a half and during that time you can do it.

By Mr. Flurry:

Q. Now, please refer in your schedules to Revenues for Circulation and state whether or not you have made any changes from Schedule 1 of G-8 for Carriers' Revenues.

A. Yes. We have, Mr. Flurry.

Q. What was the basis of that change?

A. Well, on the books of The Times-Picayune Publishing Company, the revenue from some of the Sunday papers thrown by the States' carriers is included in Circulation Revenues, and we removed it for the purpose of this study and transferred it to the Sunday paper.

Q. Did that refer to newspapers sold through States' delivery boys on Sunday?

A. Yes.

Q. Now, did you make any change in the revenues from [fol. 1567] country news dealers?

The Court: That removal operated against the States, didn't it?

A. Yes, Your Honor. We reduced the revenues by $148,000.

By Mr. Flurry:

Q. Did you change the figures on revenues from country news dealers and city news dealers?

A. No. Those remained unchanged.

Q. Did you change country subscriptions revenues?

A. Those remained unchanged.

Q. Now, did you carry in your study revenues from office subscriptions?

A. Yes.

Q. Were those subscriptions revenues combined with any other revenues? Or were they carried as a separate item?

A. They were transferred in the study from office subscriptions to carrier revenue.

Q. Now, go down to operating expenses, Mr. Conroy, in G-8.

Did you change the Operating Expenses shown in Schedule 1 of G-8 for the composing room under the column "New Orleans States, Daily"?

A. Well, we changed the total expenses applicable to the composing room, first, by the amount of revenues from the account called "Cuts, Mats and Metals Sold. That is applicable to the composing room.

[fol. 1568] Then, in that statement you showed me a while ago, we changed the amount of composing room expenses allocated to the States.

Q. Now, in your allocations to the daily States, what ratio did you use in the various operating expense categories?

A. Each of the classifications, Mr. Flurry?

Q. Yes.

A. In the composing room, we used the ratio of Published Pages.

Q. And in the press room?

A. In the press room, we used the number of thousand eight-page papers printed.

Q. And in the stereotype room?

A. The stereotype room is an instance where the information available for what is normally considered a proper distribution of that expense was not available. It is usually the number of mats made; but we allocated it here, in the absence of a better method, on the basis of Published Pages.

Q. As a matter of fact, the Company kept no records of the mats made as between the papers, did they?

A. They kept no records; therefore, the allocation that is normally used could not be used; and, as a substitute, Published Pages was used as a basis——

Q. But would you arrive at the same percentage, Mr. Conroy, if you took Published Pages as you would if you took Circulation times Daily Pages?

[fol. 1569] A. No.

Q. Or if you took Circulation times——

A. Published Pages resulted in a larger allocation of expenses to the States than you would have obtained if you used Circulation Times Published Pages.

Q. If you took a thousand times eight-page papers, would it give you the same as circulation times pages?

A. Substantially the same ratio, Mr. Flurry.

Q. Now, is there a substantial difference in the figure carried in Schedule I of G-8 and the figure arrived at under your studies for the Photo-Engraving Department?

A. I wouldn't be able to answer whether there was a substantial change, because I have only before me Schedule 1.

Oh, I see. I am sorry. I am very sorry. I think I can answer that question.

There is a substantial change in the amount of expenses for the Photo-Engraving Department.

Q. Will you state what that change is, please?

A. Well, the change results from two things: One, crediting back to the Photo-Engraving Department that

portion of the income that was included in the account called Cuts, Mats and Metals Sold, which we determined to be applicable to the Photo-Engraving Department. In part, the change would result from a change from using the figures on the Company's books to adopting one of the ratios used in allocating expenses.

Q. Will you explain to the Court, please, why you saw [fol. 1570] fit to make that change in the Photo-Engraving Expense Department, whereas you did not make it in your annual audit for the year 1949?

A. In the rendition of our reports to the Times-Picayune, it is our feeling that we are showing in the report the aggregate income from all sources; and, in Schedule 1, which I am looking at, the Operating Revenues are divided between Advertising, Circulation, Radio and Other. Under the caption "Other," the Cuts, Mats and Metals Sold is shown in the total.

The reason it is presented that way by us is because that is in keeping with the method of accounting employed by the Company.

Q. Mr. Conroy, I am not clear as to just what the sale of Cuts, Mats and so forth are.

Do you know what that is?

A. Yes, I do, Mr. Flurry. The Company maintains one account on its books for all of the income which it receives from Cuts, Mats and Metals, Photo-Engraving Department and all income of that nature directly related to the operation of a newspaper, but they prefer to keep it all in one account.

Q. Now, were there any other adjustments made in Photo-Engraving, other than the deduction of this sale of Cuts, Mats and Metals?

A. Mr. Flurry, there would have been a change, also, because of the adoption of one of the allocation ratios that was used, instead of using the expenses as actually shown on the Company books.

Q. What ratio did you use on Photo-Engraving?

A. There again, we used a ratio of Published Pages.

[fol. 1571] Q. Now, in the mail room, has there been any change from Schedule 1 of G-8 in your study as to the

amount allocated to the New Orleans Daily States for the mail room?

A. Yes. There has been.

Q. On what ratio did you distribute those expenses?

A. In the case of the mail room, we determined that, first, there was a special pay roll which was entirely in connection with the Sunday operation and was, therefore, charged in our allocations to charge it entirely to the Sunday paper.

The remaining expenses carried on the books, as the evening paper, was then allocated between the evening and Sunday paper on the basis of time studies made in the mail room of the actual time devoted to working on the Sunday comics and Sunday papers, as opposed to working on the afternoon edition.

In addition to that, we found, in going through the expense accounts charged to the Times-Picayune, that some of the expenses there were directly applicable to the Sunday paper.

Q. Did you make that study from the time cards of the Company?

A. The study was made by a foreman of the mail room of The Times-Picayune Publishing Company last summer, as I recall.

Q. Did anyone from your office check that study made by the foreman?

A. The study was accepted by us from the foreman of the mail room.

Q. Did you make any investigation at all to determine [fol. 1572] whether or not the foreman's work had been accurate and whether or not it reflected, in your opinion, the true picture in the mail room?

A. We did, Mr. Flurry, yes.

Q. Do you know how many employees are employed in the mail room?

A. I cannot recall.

Q. You don't have any showing which would indicate or refresh your recollection on that?

A. No. I have no recollection of that, Mr. Flurry.

Q. Do you have any opinion as to the number of employees?

A. I have no opinion as to the number of employees.

Q. Do you know what the wage scale in the mail room is?

A. I do not.

Q. Do you know whether or not the stuffing of the Sunday paper is done by a special crew or the regular crew?

A. The stuffing of the Sunday paper is done by the men carried on the pay roll designated as "Evening States Pay Roll".

Q. Do those men stuff Sunday papers part of each day during the entire week? Or only on certain days?

A. They are working on the Sunday paper throughout the week.

Q. Do you know whether or not any special crews are employed at the end of the week for the getting out of the Sunday paper in the mail room?

A. Extra people are employed to handle the Sunday paper, yes.

The Court: Is that this Special Pay Roll you were talking [fol. 1573] about?

A. Yes. That has been charged to the Sunday paper.

By Mr. Flurry:

Q. Do you know what other expenses there are in the mail room, other than Pay Roll?

A. Supplies and other expenses.

The Court: We will stop now for the luncheon recess. We will take a recess until 2:00 o'clock.

(Whereupon, at 12:30 o'clock, p. m., a recess was taken until 2:00 o'clock, p. m. of the same day.)

[fol. 1574] AFTERNOON SESSION

(Mr. Conroy resumed the stand at 2:00 p. m. and cross examination was continued.)

By Mr. Flurry:

Q. Mr. Conroy, before noon we were referring to the expenses in the Mail room. Do you know what percentage of the total expenses in the Mail room were for Supplies and Other Expenses than the Payroll?

A. I don't know the percentage. I would have to cal-

culate it. But in making the apportionment, Mr. Flurry, we used the same basis as the distribution of the payroll.

Q. Could you refer to your study summary for the year 1949 and give us an idea of how much of the $16,907.00 charged to the daily States in the Mail room represented Supplies and Expenses other than Payroll?

Mr. Wilson: Well now, are you asking him to refer to his work papers?

Mr. Flurry: Yes.

A. The work paper which I have shows only the total expenses of the Mail room.

By Mr. Flurry:

Q. I say, would you be able to give any estimate as to what portion of that was due to Supplies and Expenses other than Payroll expenses?

A. I would not, from these papers.

Q. I believe you stated this morning that you did not [fol. 1575] know how many employees were employed in the Mail Room. Is that correct?

A. That is correct.

Q. I ask you to look at Defendants' Exhibit 5 and state how many employees are shown on that exhibit as being employed in the Mail Room.

A. 73.

Q. Now, what percentage of the total Mail Room expenses have you charged to the States, daily?

You may refer to your worksheet.

A. I shall have to have a piece of paper to calculate that.

(Paper and document furnished to witness.)

A. (Examining document.) Of the total expenses of the Mail Room the allocations made by us in the special study to which you are referring, eight (8) per cent of the expenses charged against the evening paper.

Q. So that would represent how many of the 73 employees in the Mail Room which you have charged to the States?

A. We did not charge it in that manner, but eight per cent of 73 is practically six.

Q. In other words, under your allocation you have charged to the daily States in the Mail Room the equivalent of approximately six employees out of 73. Is that right?

A. On that approach, Mr. Flurry, that would be correct.

Q. Now, will you refer to your worksheets and state whether or not there is a difference in the Advertising expenses charged to the daily States from that which was carried in Government Exhibit 8, Schedule 1?

[fol. 1576] A. In the Schedule 1 of Exhibit 8, if I understand your question correctly, $79,542.03 is carried as Advertising expense. In the allocation of the expenses of the Advertising Department, we now have charged $101,931.50.

Q. By what standard did you arrive at the changed figure in your study?

A. We reviewed each operating expense within the Advertising classification, as carried on the books of the Company, and generally divided such expenses in relation to the Advertising revenues to which they related.

Q. Now, please refer to the Editorial Expense and state whether or not you have carried in your revised study the same figures as were carried in Schedule 1 of Government Exhibit 8 for the daily States.

Mr. Wilson: If the Court please, I would like to object to this line of examination. I am not quite clear whether he is trying to prove whether the study was right or that the study was wrong. We, in the direct examination, developed the fact that there could not be precise ratios on that. The study was never offered in evidence. It seems to me this goes beyond the scope of proper cross examination. I am not sure what Mr. Flurry is trying to achieve.

Mr. Flurry: We think, Your Honor, that we have a right to know just how the witness arrived at these results: what he included in his study and how he arrived at what he did include in his study.

Mr. Wilson: The study is not in evidence.

[fol. 1577] The Court: The result of the study is in evidence.

Mr. Wilson: That is right.

The Court: So I think the question is proper.

The objection is overruled.

A. The answer is "Yes," Mr. Flurry.

By Mr. Flurry:

Q. Do you mean by "Yes" that the figures are the same?

A. I thought you asked if I had changed them. I said, "Yes."

Q. Upon what basis did you make that change?

A. On the books of the Company are kept various accounts for editorial expenses, divided between the Times-Picayune and the States. Generally speaking, separate staffs are maintained for each of the two papers. However, in reviewing the accounts we determined that certain of the writers carried on the payroll of the States performed services for the Sunday paper, and in such instances we allocated one-seventh of their salaries to the Sunday paper. There were also certain editorial features and other features carried in newspapers that were carried in the daily States and also carried in the Sunday Times-Picayune-States, and we made appropriate adjustment for that fact.

Mr. Flurry, before lunch I may not have stated the correct description of the income from Advertising, or the income credited to the Advertising Department that was included in Cuts, Mats and Metals Sold, and I would like now, if I did not state it correctly, then, to say that that is largely for art work performed by the Advertising Department.

I would like, too, if I may, to make the statement that all [fol. 1578] of the allocations which we have made in connection with this study were made on the basis of the information available to us and on the basis of ratios that are customarily used, where we could apply such ratios. I don't believe that it can be said that any results thus secured can be considered to be an accurate result, particularly when you realize that the allocations must, in certain instances, be based on arbitrary methods, lacking in proper information, and then when you are all through the amounts allocated to several departments do not measure, in any degree, the amount of expenses that would be eliminated if any one of the editions were eliminated.

Q. It does, does it not, Mr. Conroy, distribute the expenses upon the basis of allowing to the integrated or com-

bined operations efficiencies which might grow out of that combined operation?

A. I would not say so, Mr. Flurry. I mean all of the ratios that are commonly accepted by accountants throughout the country as applying to various departments of an integrated operation must necessarily be arbitrary in some instances, because where companies do not keep the information to permit of an allocation on a recognized basis, it becomes arbitrary, and even when they do keep the records, it does not necessarily produce accurate results.

Q. Is it not recognized in the accounting profession that such distributions are necessary at times and that reasonable methods of allocations are proper?

A. I don't believe that it is recognized that it must be done, Mr. Flurry. I think that a business might at all times [fol. 1579] appropriately keep records to reflect the total expenses of each of the departments, be it composing room, editorial room, or any of the departments.

Q. My question was not, Mr. Conroy, as to whether or not the Company should keep such records, but in cases where records have not been kept, is it not a common practice in the accounting field to adopt what appear to be proper and reasonable allocation standards for the showing of the costs in the various departments, or with reference to the various products produced.

A. Mr. Flurry, I think that in all cases such as that, management would make the decision as to whether they wanted to keep the accounts total or whether they wanted to keep them in some other manner.

The Court: What is reasonable and proper is largely a matter of opinion, is it not?

A. I think so.

The Court: Do you agree with that?

A. I agree fully with that.

By Mr. Flurry:

Q. My Conroy, I show you Government Exhibit 126 and refer you to page 5, the middle paragraph, and ask you to read to yourself that paragraph.

A. (Witness reading paragraph mentioned.)

Mr. Wilson: I think you can read this a little better.

A. It is the same?

Mr. Wilson: Yes.

A. I have read it.

[fol. 1580] By Mr. Flurry:

Q. Now, you stated that you thought this question of whether or not allocations were made was a question for management to determine. Did you recommend to the Company at that time that these various allocations which had not been made in the Company records be made?

A. We did not.

Q. Now, did you renew the statement contained in page 5 of Exhibit 126 in your report or letter to The Times-Picayune Publishing Company in 1946?

A. Yes, we renewed the statement in 1946. If I may explain——

The Court: You may.

A. (Continued) If I may explain, I think that we had in mind that the Company was keeping its records in a certain manner. We were directing their attention to the manner in which they kept the books and we were saying that if the management wanted to determine separately the income of the Times-Picayune and the New Orleans States, that it should consider the advisability of having its own auditing department make a survey.

Q. And I believe you stated this morning that you conferred with several gentlemen with the Company, and you were informed that they were not interested in making those allocations?

A. Mr. Flurry, I stated this morning that at the conferences at which these reports on the recommendations to [fol. 1581] the Company respecting their internal control were discussed, when we reached that paragraph the management asked us if the internal control of the Company would be improved if they made any changes in the method then being used, and I answered—my answer to that was no,——

Q. Now, when was that?

Mr. Wilson: Just a minute, Mr. Flurry. He hasn't completed his answer.

Mr. Flurry: I understood the witness had stopped.

A. Well, I think I finished the answer.

By Mr. Flurry:

Q. Now when did that conference take place?

A. Mr. Flurry, I am unable to tell you precisely when the conference took place.

Q. Do you recall whether it was in 1945 or 1946?

A. I think it would have been in both years following the rendition of this supplemental report.

Q. Now, Mr. Conroy, at the time you were making these recommendations, you considered that it was possible to properly allocate the expenses, did you not?

A. We did not. We were suggesting, Mr. Flurry, that if they wanted—they were keeping their books in such a manner to show the Times-Picayune and States, and we had noted certain items which seemed to us to have been arbitrarily distributed between the two operations, and we were saying to the management that, if you desire to do this thing between the two newspapers, then we think you [fol. 1582] should reconsider the whole subject.

Q. Well, you were not recommending something to the Company which you thought was impracticable or impossible, were you?

A. Well, I should think that we did not believe that it was impracticable or impossible, but we were mindful of the fact that there were many considerations to be given to the whole question.

As a matter of fact, we may well have had in mind that the Company would be well advised to keep their revenues and expenses for the entire operation together. The purpose of our comments was to bring discussion on that point.

Q. Now, referring again there to Defendant's Exhibit 5, Mr. Conroy, isn't it a fact that a great deal of the payroll of the Company—that is, the cardboard exhibit, isn't it a fact that a great amount of the payroll of the Company is for employees who are used in more than one of the papers?

A. Mr. Flurry, I am not certain that I am giving the correct answer to your question, but in the composing room, it shows that there are 172 employees, and the key on the side indicates that all of them are engaged in the morning, afternoon and Sunday editions.

Q. Would you say, taking all of the departments, Mr. Conroy, that a great portion of approximately one thousand employees of the Company are engaged in more than one department—I beg your pardon—engaged in the work of more than one of the papers in the various departments?

A. Well, you will have to give me a little time to look at [fol. 1583] this because——

Mr. Wilson: Just look at the top bar.

A. It says How Times-Picayune Publishing Company Employees are Engaged, Total Employees 953.

By Mr. Flurry:

Q. Now, how many of that 953 are shown on that chart as being engaged in the work of more than one paper?

A. 682, if I understand this chart correctly, considered to be engaged in the morning, afternoon and Sunday paper; 120 engaged in the morning and Sunday edition; 55 on the afternoon and Sunday editions; 36 on the morning edition only; 59 on the Sunday edition. I believe that is what this shows.

Q. Now, under the circumstances portrayed by that chart, "D-5", would you say that it would be practicable to keep detailed time cards on each employee in order to determine every minute that he worked for the different papers?

A. I think that would be impracticable.

Q. Would you say that, under those circumstances, it would be practicable to work out a formula for the determination of the payroll breakdown as between the papers?

A. Within the limitations of the use of all formula, I think I should answer that yes.

Q. Now, isn't it a fact, Mr. Conroy, that after you had been told by the Company that they did not desire to make

such a breakdown, that you renewed the recommendations which you had placed in your recommendation of May 18, [fol. 1584] 1945?

A. I think we referred the attention of the management to it the second time, Mr. Flurry, yes.

Q. As a matter of fact, as late as 1951, you made that recommendation, didn't you?

A. I believe we did, Mr. Flurry.

The Court: You recommended that they do it if they wanted to do it, you suggested that they do it if they wanted to do it?

A. We suggested that they give consideration to whether they should, whether they wanted to do it or not.

By Mr. Flurry:

Q. Now, why did you renew that suggestion after you had been told by the officials of the Company that they were not interested in making such a breakdown?

A. Well, we put it to them, Mr. Flurry, again because there had been so much discussion of it in recent months.

Q. You mean since this case arose?

A. Since the trial.

Q. Now, going back to the editorial expenses, Mr. Conroy, did you arrive at your distribution of expenses to the New Orleans States in the same manner for 1948 as you did for 1949 and also for 1950?

A. For each of the years 1948, '49 and '50, allocations were made on the same existing basis.

Q. Did you know at the time you were making the study that the States' editorial page in the Sunday paper did not [fol. 1585] begin until November 27, 1947—I mean 1949.

The Court: Will you read that question, please?

(Question read by reporter.)

A. We did.

By Mr. Flurry:

Q. I believe you mentioned this morning the fact that the States' editorial ran in the Sunday paper as showing one of the connections between the Sunday paper and evening paper, is that right?

A. Yes, Mr. Flurry.

Q. Now, you had in Schedule 1 of Government Exhibit 8, Radio Station WTPS, and refers to Sub-schedule 2. I will ask you if you have changed the figures appearing under that classification in your study from the figures carried in Schedule 1 of Government Exhibit 8?

A. The only change that we seem to have made in the radio was to charge the operations of the radio—the depreciation on all radio equipment as such.

Q. That was not included in Schedule 1 of Exhibit 8, was it, the depreciation?

A. Mr. Flurry, will you repeat the question to me, please?

Q. I say, was the depreciation which you had taken into consideration in your study and in the summary of your study, was that included in the radio expenses appearing in Schedule 1 of Government Exhibit 8?

A. It is not.

Q. Where did you take the depreciation figures which you [fol. 1586] have used in your study and summary from?

A. We obtained them from the books of the Company.

Q. Where were corresponding figures carried in Exhibit 8?

A. On Schedule 2.

Q. Under depreciation?

A. Under depreciation.

Q. Now, turning to Maintenance and other expenses, is the amount charged to the States daily in Government Exhibit 8, Schedule 1, the same as that used in your study?

A. No, it is not.

Q. How did you arrive at your study figure of $14,477.50, as compared with Schedule 1 of Exhibit 8 for maintenance of $3,110.00?

A. $3,110.33 is the amount allocated on the books of the Company as maintenance expenses to New Orleans States.

Q. And how did you arrive at your figure in your study?

A. For the purpose of this study, we combined all the maintenance expenses and then—for the purposes of allocation, the maintenance expenses were very difficult to answer, but we allocated all of the maintenance expenses on the basis of published pages.

[fol. 1587] By Mr. Flurry:

Q. Now, did you use the same figures in your study for Circulation Expenses as was used in Schedule 1 of Exhibit 8?

A. We changed them.

Q. On what basis did you change those?

A. In general, we found that the expenses of the Circulation Department were fairly well separated between the newspapers on their books, but we did determine that certain of the country circulation expenses were entirely charged on the books to the Times-Picayune; and, in the study, we redistributed those items to the morning paper, the afternoon paper and the Sunday paper on the basis of the respective ratios of country circulation.

The Circulation Expense has been increased in that expense study to which you refer.

The Court: The Circulation Expense of the States?

A. Of the States. That is right.

By Mr. Flurry:

Q. In other words, Mr. Conroy, on the records of the Company, approximately $3,110 has been charged to the States out of the total expense of $150,747? Is that correct?

A. Out of the total Mainftenance Expense of $150,747.05?

Q. You are right.

A. Only $3,110.38 was allocated on the books to the New Orleans States.

Q. That represented approximately 2 per cent, did it not?

[fol. 1588] A. Approximately 2 per cent.

Q. And you have increased that to approximately 30 per cent?

A. Slightly over 30 per cent, I think.

Q. Now, turning to Social Security taxes, Mr. Conroy, have you handled those in a different manner in your study to the way in which you handled them in your report, which is Government Exhibit 8?

A. Yes.

Q. Will you explain what you did with respect to those in your study as compared with what you did in Schedule 8? In Exhibit 8, I mean.

A. There again, Mr. Flurry, was an item that was debatable as to the proper method of allocation.

The Social Security tax expense applies to Social Security taxes on the salaries of all employees, regardless of where they work.

For the purpose of this study, it would have been a difficult job, most difficult, to relate the specific amounts of Social Security taxes to each of the pay roll classifications as charged on the books.

We, thereupon, on an arbitrary basis, because Social Security taxes are one of those kinds of expenses that are usually allocated—We did so on the basis of Published Pages.

Q. In your Audit Report for 1949, Government Exhibit 8, you carried Social Security taxes as a part of the General and Administrative Expenses, did you not?

A. We did, Mr. Flurry.

Q. And in your study, you have removed Social Security taxes from General and Administrative Expenses and dis- [fol. 1589] tributed it under the expense accounts from which you arrive at your profit from operations before General and Administrative Expenses. Is that correct?

A. For the purpose of the special study, we allocated Social Security taxes.

Q. Was that also done with respect to all depreciation?

A. No, not all depreciation, Mr. Flurry.

Q. Will you explain just what you did do with respect to depreciation?

A. We removed from the total depreciation expense the depreciation on the presses and allocated such depreciation on the basis of the number of thousand eight-page papers.

We similarly removed the depreciation on the equipment in the mechanical departments and there, lacking a correct basis of allocation, we again used the basis of Published Pages.

I believe those were the changes we made in the depreciation.

Q. You also took out depreciation on the Radio?

A. We took the depreciation out on the Radio. That is correct.

Q. Now, will you refer to your summary of your study

and state just what expenses which were included in Government Exhibit 8 which you have in your study included in General and Administrative Expenses?

Mr. Wilson: Excuse me. Do you mean summary of his study? Or the work papers that he has there?

Mr. Flurry: Call them either one you want.

Mr. Wilson: You have the summary. He has the work [fol. 1590] papers.

By Mr. Flurry:

Q. Whichever one you prefer to use, Mr. Conroy, to refresh your recollection. It is immaterial to the Government.

A. In making the special study, there were included in General and Administrative Expenses certain items which we believed were customarily distributed among departments, particularly where you were distributing such expenses, say, for maintenance. We had such expenses as warehouse expenses, power and light, fuel, freight and express and truck expenses which we thought more nearly related to the same type of expenses already distributed in the summary, and we then removed them from the General Administrative classification.

Q. And you distributed them where you thought it was proper to distribute them in the expense accounts for the various departments?

A. We added that to one classification, Maintenance, and described them, I think, as Maintenance and Other Expenses and distributed the total on the basis of Published Pages, again recognizing the limitations of the information that we had.

Q. Now, after you had done that, what did you have left in General and Administrative Expenses under your study?

A. We had various expenses such as officers' salaries, directors' fees, telephone and telegraph, legal expenses, contributions, pensions to former employees, accountants' fees, dues, salaries of the office, the Credit Department, Auditing Department, miscellaneous stationery and supplies in the office, postage, real estate and personal property [fol. 1591] taxes, Louisiana corporation franchise taxes, Mississippi corporation franchise taxes, city and state sales

taxes, depreciation on buildings, depreciation on office equipment, and provision for Doubtful Accounts Receivables.

Q. And those are the expenses which you have not undertaken to allocate in any way?

A. That is correct, Mr. Flurry.

Q. Did you believe, Mr. Conroy, at the time you recommended or suggested to the Company that if they wanted a complete showing as to the operating results between the different papers that they allocate General and Administrative expenses? Did you at that time believe it could be done?

A. No, sir.

Q. You mean to say that you had suggested that they do something which in your opinion could not be done?

A. Well, perhaps I should say that we suggested that they consider it, but we didn't know whether it could or could not be done without a study by the Auditing Department.

Q. Have you had any experience, Mr. Conroy, in auditing the accounts of companies producing certain major products?

A. Yes, sir. I have, Mr. Flurry.

Q. Do you know whether or not those companies are interested in breaking down the costs that go into the production of each of those products?

A. They are interested in the costs, Mr. Flurry, that go [fol. 1592] into the manufacture of the products, but I know of very few, if any, companies that believe that General Administrative Expenses should go into those costs; because, if they did, they would then play a part in the determination of the inventory value, and I think that most businesses feel that General Administrative Expenses should not be part of the inventory valuation.

Q. Will you explain what you mean by "inventory value," Mr. Conroy?

A. Well, you asked me if I had had experience in any companies which manufacture several products and I answered "yes". In those companies, they endeavor to keep cost records of the cost of manufacture of those products. Such costs do include more than merely the labor costs and

the material costs, but they only include such expenses as are considered directly connected with the manufacture of the particular article; and, having determined such cost, they then use that as a basis of valuation of the number of units carried in the inventory.

Q. Do you know of any such studies which have been made by your accounting firm in that field?

A. I don't recall, Mr. Flurry. I don't know that. If you are asking me: Is that a normal thing that we do in the examination of accounts of manufacturing companies, I will say "yes".

Q. Now, assume that you have a parent company which has three subsidiary operating companies. Is it not necessary that the parent company know the operating results of each of its operating subsidiaries?

Mr. Wilson: I object to the question on the ground that, [fol. 1593] first, there is no evidence in the record on which the hypothesis can be based. Second, it goes beyond the scope of proper cross examination, because it was a subject matter that was not gone into on direct examination.

The Court: I think the first ground is valid. The objection is proper and is sustained.

By Mr. Flurry:

Q. Have you had experience in undertaking the cost of operations as between segments of a business?

Mr. Wilson: May I have the question, please?

(The Reporter read the last question.)

A. I am not so sure that I understand what is meant by "segment," Mr. Flurry.

By Mr. Wilson:

Q. Operating segments.

A. Departments?

Q. No, not departments of an operation, but divisions of a company.

A. In order to assist me in the understanding of that question, would I understand it to mean a situation where a company has an office, a plant in New Orleans and one in Baton Rouge and one in Georgia, shall I say?

Q. Yes. That might be one illustration.

A. All right. Yes.

Q. Is it not necessary to determine the results being accomplished in each of those divisions to determine what part [fol. 1594] of the Administrative expenses should be applied to each of the divisions?

A. Management could be entirely satisfied to know how each plant comes out, without any distribution of General and Administrative expenses.

Q. Would you not consider that the salaries of management is a cost of production where you are producing a product?

A. I would certainly think that the salary of the superintendent of the particular plant would enter into an allocation of production costs, but I wouldn't think that that would apply to the salaries of the administrative officers.

Q. How would you determine how much each division of the company should absorb of the cost of management?

A. Well, we get into a field of combination here of accounting and management, and I think it is entirely possible for management to know the results of operations of as many divisions as they may have, by divisions; and then having so ascertained those results in the manner in which they decide to keep the accounts, they would then subtract the General and Administrative expenses, such as legal fees and dues. The management of some division may not feel that it is a proper charge to his division for legal expenses of the company, as a whole; and, very frequently, bonus arrangements are based on the profits of the division, without regard to allocation of General Administrative expenses.

[fol. 1595] The Court: Do you consider the situation here in this case as being comparable to a company which is operating three plants in three separate places, producing different products?

A. I think there is a difference here, Judge.

By Mr. Flurry:

Q. If you assume that the Times-Picayune, morning and Sunday is one newspaper and that the evening States is a separate newspaper from the morning and Sunday, could

you ascertain accurately the costs of the production of either of those papers without considering overhead costs such as Management, and the items which you have named as included in General and Administrative Expenses under your study?

Mr. Wilson: Well, I object to the question. The witness has already testified as to what he is able to do in regard to the Times-Picayune Publishing Company, and the assumption which Mr. Flurry asks in his question adds nothing to the witness' ability to do what he has done for The Times-Picayune Publishing Company. His hypothesis has no basis.

The Court: I overrule the objection.

A. Mr. Flurry, may I have the question?

(The Reporter read the last question.)

The Court: Now, just a minute. The question goes beyond what I first thought it did. It is my understanding this witness said it is impossible to accurately allocate costs at all. Didn't you so testify?

A. I have so testified.

[fol. 1596] The Court: Any allocation is arbitrary, to some extent. I think the question is objectionable, as it is framed.

I take the word "accurately" to mean precisely in this case.

Mr. Wilson: May I suggest if he is going to reframe the question that he add other facts necessary to the hypothesis; namely, whether it is being operated by one company, namely, The Times-Picayune Publishing Company. Or if he is suggesting "separate," by having two or three separate companies.

The Court: Counsel can reframe the question. I won't suggest how.

By Mr. Flurry:

Q. Assuming, Mr. Conroy, that the Times-Picayune, morning and Sunday is one paper, and the States, evening, is another paper, published by the same publishing com-

pany, namely The Times-Picayune Publishing Company, that management desires to know the approximate costs of producing the Times-Picayune, morning and Sunday, as one paper, and the States as another paper, could you approximate the cost which you have included in General and Administrative Expenses as between the two papers?

A. Mr. Flurry, it would become a question then of what is the basis of allocation of General Administrative expenses. I think that may well be a question without a satisfactory answer.

Q. Would circulation be a reasonable basis for an approximation of those costs?

A. Considering the nature of the expenses included in [fol. 1597] General and Administrative expenses, I should say "No."

Q. Now, assuming, Mr. Conroy, that The Times-Picayune Publishing Company published one newspaper, namely, the Times-Picayune morning and Sunday, and a separate newspaper, namely the States, daily, from one plant, and also operated a radio station from another plant, could you approximate the costs to be charged to each of those separate newspapers and the radio station in order to determine the approximate costs of the operations of each?

A. It seems to me that that is the same question as before, Mr. Flurry; that we could find no basis for that.

Q. Will you explain why you could not use the Circulation ratio for the comparison of General and Administrative expenses applying to the two separate newspapers under my assumption——

A. Well, the General Administrative——

Q. And that you can use the Circulation ratio as applied to all other expenses of the Company?

Mr. Wilson: Well, I object to the question on the grounds that there has been no testimony that you can use the Circulation ratio as applied to all other expenses of the Company. Neither this witness nor Mr. Houghton has so testified.

The Court: You mean the item on accounts of all Other expenses, or do you mean all expenses?

Mr. Flurry: May it please the Court, I think the witness

testified he had used Circulation as the basis for breaking down the revenues and expenses of the Sunday paper to the morning paper and the evening paper.

[fol. 1598] The Court: "Certain." You (Mr. Flurry) said "all." He applied the Circulation to certain items, did you (the witness) not?

A. To certain items; yes, sir.

The Court: Weren't there others to which you did not apply them?

A. There were others to which we applied certain other ratios.

The Court: The objection is sustained.

Mr. Flurry: Maybe I am confused, myself, on the witness' testimony. I had understood the witness' testimony to be on the breakdown between the Times-Picayune, morning, the States, evening; as to the Sunday revenues and expenses that he had based it entirely upon Circulation ratios of 356-5; that in determining the allocation of expenses and revenues to the States, daily only, he had used various ratios. But it was my understanding that his testimony was as to the breaking down of the revenues of the Sunday paper only that he had used a Circulation ratio all the way through.

The Court: But are you applying your question to the Sunday paper only? I thought you said "all the expenses."

Mr. Flurry: I am applying my question to the breakdown between the States, daily, the Times-Picayune, morning and Sunday, assuming that the States is a separate newspaper from the Times-Picayune, morning and Sunday.

The Court: Mr. Hickman, suppose you read the question back.

[fol. 1599] (The Reporter read the last question, as follows:

> "Will you explain why you could not use the Circulation raito for the comparison of General and Administrative expenses applying to the two separate newspapers under my assumption; and that you can use the Circulation ratio as applied to all other expenses of the Company?"

The Court: The objection is sustained.

By Mr. Flurry:

Q. Mr. Conroy, I ask you to refer to your worksheets, under your study, and state whether or not you did allocate the Sunday revenues and expenses upon the ratio of Circulation of the morning paper to the evening paper.

A. We first allocated the revenues to a Sunday operation. We allocated the expenses to a Sunday operation; in keeping with the manner in which I described the allocations of the various expenses of the operating departments. Having arrived at the amounts applicable to the Sunday edition, we then divided the net result on the basis of the Circulation: namely, 35 per cent to the States and 65 per cent to the Times-Picayune.

Q. Now, did you use Circulation ratio in arriving at the amount of revenues and expenses which you set aside to the Sunday paper?

A. These were largely based on the actual figures, Mr. Flurry, where actual figures were available. The Sunday figures are based on Sunday revenues applicable to the Sunday paper. Where they were not, we may have had to use some allocation method to arrive at the result.

[fol. 1600] Q. Did you have the actual figures for Advertising income?

A. In some instances we had the actual Advertising income which had to be determined by analysis of the accounts on the Company's books.

Q. What did you use where you did not have those actual figures?

A. Well, in the case of the Classified revenues, they were prorated on the books: 80 per cent to Times-Picayune, 20 per cent to the States. We credited to the Sunday newspaper a portion of the total Classified Advertising revenues, based on the ratio of the Sunday Circulation to the aggregate Circulation of the evening, morning and Sunday paper.

Q. So you used Circulation for that allocation wherever the actual figures were not known?

A. First we used the actual figures, and next where we had to resort to ratios, in the case of Advertising and the Classified, we used the Circulation ratio.

Q. Now, I assume that you had the actual figures on all of the Circulation revenues?

A. In all instances we had the actual figures on Circulation, except that we found it necessary to remove from the States, evening paper, the Sunday Circulation shown by States Carriers, and we credited that to the Sunday Times-Picayune-States.

Q. Now, did you obtain the Sunday expenses by allocating on the basis of Circulation, or did you use various ratios for that?

A. In determining the expenses applicable to the Sunday edition we used the ratios that I described as being applicable to each of the operating departments. We used the ratio for the Composing room as based on Published Pages, and down the line as I answered your questions before.

[fol. 1601] Q. Now, going back, Mr. Conroy, to the question we had this morning which you were to check at noon, on Agents' Commissions, can you now state whether or not you charged to the States daily any agent's commissions for the year 1949 in your study?

A. I can now answer that question, Mr. Flurry, that in the year 1949, there was no portion of the account described as Agents' Commissions charged to the States, for the reason that the Agents' Commissions here in question applies entirely to the morning and Sunday editions of The Times-Picayune Publishing Company.

Q. Do you mean to say the Company doesn't pay an Agent's Commission on advertisements received in the evening paper?

A. I do not mean to say that. Mr. Flurry, dealing with the account which is in Government Exhibit 8 and described as Agents' Commissions, that is particularly, or specifically, the commission of Mr. Binnings, and relates entirely to local retail advertising secured by Mr. Binnings for the morning and Sunday editions of The Times-Picayune Publishing Company.

Q. Where in the records of the Company are Agents' Commissions on general advertising carried?

A. The Agents' Commissions of Jann & Kelley are carried in the advertising department expenses.

Q. Was that true in 1950?

A. I believe that was true in 1950.

Q. Was it also true that there were no Agent's Commissions on general advertising carried in the account of [fol. 1602] Agents' Commissions in 1948?

A. That is the same account and the same situation would have prevailed, we charged no Agents' Commissions against the States in the special study, Mr. Flurry.

The Court: Court will be at recess for ten minutes.

(Short recess.)

The Court: Proceed.

By Mr. Flurry:

Q. Mr. Conroy, I believe you stated that the Agents' Commissions was not on general advertising, but were commissions paid to a local man in New Orleans on advertising obtained by him—I didn't get the name clearly, whether it was Binns or Binnings.

A. Binnings, B-i-n-n-i-n-g-s.

Q. Do you know whether or not that arrangement applied in 1950?

A. The same arrangement applied in 1950 except that Mr. Binnings received Agents' Commissions on other advertising.

Q. What other advertising did he receive Agents' Commissions on in 1950 that he had not received in 1949?

A. There were some—I think there were some classified, I am not sure of that, Mr. Flurry, but I do know that Mr. Binnings' commission was allocated between the separate editions of the newspapers on the basis of the advertising revenue which Mr. Binnings secured.

Q. Have you examined that account?

A. It was done under my direction.

[fol. 1603] Q. Who made the examination of that account, do you know?

A. For us?

Q. Yes.

A. Mr. Cohen.

Q. Did Mr. Cohen make all of these examinations?

A. Yes.

Q. In fact, he is more familiar with the details of this than you are, is he not?

A. He is more familiar with the details than I am.

Q. Is Mr. Cohen the gentleman sitting across the table from me?

A. He is.

Mr. Phelps: Excuse me, Mr. Flurry. May we have his full name for the record so he will not be confused with the other Mr. Coen?

A. Seymour A. Cohen.

By Mr. Flurry:

Q. Are you a cost accountant, Mr. Conroy?

A. I have never applied that title to myself, Mr. Flurry.

Q. Have you ever in your experience distributed general and administrative expenses in cost accounting?

A. I can't recall that I ever had occasion to distribute general and administrative expenses on cost accounting because cost accounting, as I have understood the term, relates primarily to the production costs of various products manufactured by a company, and, as I stated before, general [fol. 1604] administrative expenses are not usually included in such costs, because then they would form the basis of computations of inventory valuations, and business men do not believe that they form part of evaluations for inventory purposes.

Q. How do officers' salaries go into inventory valuations?

A. Officers' salaries, if officers' salaries were included in the cost of manufacture of an item, they would become part of the inventory valuation, if the value is based on the cost of production.

Q. Aren't those salaries included in the prices charged for the product?

A. Well, specifically, I would think not. I think management determines the prices that it may get for its product in fair competition, and it knows its cost of production of such product; it knows its gross profit from the sale of such product, and from the remainder, they subtract the general administrative expenses to determine whether they make a profit or loss.

Q. Now, will you refer to Schedule 2 of Exhibit 8, Government Exhibit 8?

A. I have it, Mr. Flurry.

Q. Will you refer to the section headed Office?

A. I have it.

Q. Would you say that the salaries included under that heading were salaries of people engaged in the production of the newspapers?

A. Not in the production of the newspapers.

Q. I didn't get your last statement.

[fol. 1605] A. Mr. Flurry, if I understand production to mean publication of the newspaper, I would answer that office expenses are not expenses in connection with the publication of the paper, but rather the expenses of handling all of the details of the entire operation of the Company.

Q. Well, what do you mean by publication of the newspaper? Is that not the production of a product in the publication field?

A. The publication of a newspaper is the product but what is sold is the newspaper itself, the advertising within it, primarily.

Q. Would you as a cost accountant include expenses in the credit department as a part of the operating costs?

A. I would not. It is a part of the overall operating expenses of the Company, Mr. Flurry; it would be included as a part.

Q. If it is cost to the Company, is there any reason why it could not be divided as between the different papers?

A. I think, with respect to this particular account, the same comment applies that I made with respect to all the others, that I think that any basis of allocation of these expenses would be entirely arbitrary, that a real basis for distribution to the various operations of the Company presents a problem again that I think is most difficult to answer, and certainly none that I could satisfactorily answer.

Q. Your answer is that as a cost accountant, you wouldn't know—or as an accountant, I believe you said that you didn't consider yourself a cost accountant—as an accountant, you wouldn't know in what way to go about the distribution of general and administrative expenses for the various operations?

[fol. 1606] A. As a Certified Public Accountant, I have had to deal frequently with problems of costs of various

industries. I believe I understand some of the problems of costs, and in my judgment it is not necessary in order to determine the operation of a newspaper, whether it is making money or losing money, to allocate office and credit department in auditing department expenses.

Q. I will ask you, Mr. Conroy, if you are interested in determining the cost of the States, assuming it to be a separate newspaper published by the Company, and the cost of the Times-Picayune morning and Sunday, assuming it to be a separate newspaper from the States, would it be necessary to divide as between the two papers the general and administrative expenses in order to determine the costs?

A. In my opinion, it would not, Mr. Flurry.

Q. You mean to say that where you have $763,000.00 for general and administrative expenses of the Company, you would not be able to determine what effect that expense had upon the cost of producing the two separate newspapers?

Mr. Wilson: May I inquire which exhibit you are referring to where you speak of $763,000.00?

Mr. Flurry: I am referring to his work papers.

A. May I have that question again.

The Court: Will you read the question back, please?

(Question read by reporter.)

A. I think my answer to that would be that I would know that the Company had $763,000.00 general administrative [fol. 1607] expenses, if that is the figure you gave me, Mr. Flurry, and I would know that in order to determine whether the operation was successful, that it had to be subtracted from their gross revenues from all sources: advertising, circulation, radio and other revenues.

Q. Well, if you were interested, under my question, in determining the profit or loss of the States as one paper and the Times-Picayune morning and Sunday as another paper, how would you determine whether or not the States had operated at a profit or loss without making some sort of distribution of the general and administrative expenses?

A. Mr. Flurry, that goes back to the first question. The States has certain revenues, and then upon various involved theories of allocations, there has been allocated depart-

mental expenses which do not necessarily mean the amount of expenses that it takes to operate the States, nor does it mean the amount of expenses that would be eliminated if the States were eliminated.

In my opinion, to determine the result of operations of The Times-Picayune Publishing Company, it is not necessary to distribute general and administrative expenses to any class of revenue or any operation in order for management to be fully informed as to their operations.

Q. Well, I will ask you to refer to your work papers and state the approximate percentage of the general and administrative expenses to the total company profits from operations before general and administrative expenses for the year 1949.

A. Mr. Flurry, are you asking me to refer to the special [fol. 1608] study that we made?

Q. Yes, to your work sheets on your special study.

A. I don't have that information in hand. I could compute it.

Q. I am not asking you to——

Mr. Wilson: If the Court please, I object to the question because this goes beyond the direct examination. There is no longer any question as to his method of computations or the results of his computations. This is asking him to make some computation that has nothing to do with what was asked on direct examination. The general administrative expenses or the gross profits of the Company was never opened up on direct, and has nothing to do with anything he has done in connection with that statement.

Mr. Flurry: If it please the Court, he testified on direct examination as to the profit shown to the Company as a whole, and to each one of the breakdowns, namely, the morning, the Sunday, in part in connection with the morning, the evening and the Sunday, in part, in connection with the evening paper. We think that it is proper on cross-examination to show in connection with those profits he has stated what items there are that he has not included and the relative value of those items as compared with the profits as to which he has testified.

Mr. Wilson: He has stated as to what he excluded. He

said that it was before taking into account general and administrative expenses.

The Court: I will overrule the objection.

[fol. 1609] By Mr. Flurry:

Q. I show you one of your work papers and ask you to refer to that. Is that your work paper for the year 1949 in connection with your study?

A. It is.

Q. Will you note the amount of general and administrative expenses and also note the profit of the combined company from operations before general and administrative expenses, and state approximately what percentage the administrative and general expenses are to the total company profits before deductions of general and administrative expenses?

A. I shall have to calculate that. (Witness calculating on paper.) As I calculate, it is twenty-six per cent.

Q. In other words, Mr. Conroy, when you stated that your study showed a profit in 1949 for the daily States of $160,952.00, you had not taken into consideration an item of expense equal to twenty-six per cent of the total Company's profit, operating profit?

A. Mr. Flurry, I think the answer to that is that I said that we gave the net operating profit of the Company before general administrative expenses, divided into afternoon, morning and Sunday, and said that that was before deduction of an aggregate of $800,000.00 and some odd thousand dollars of general and administrative expenses. Likewise, it was before the addition of income from investment and other sources. I do not remember that I said it was twenty-six per cent.

Q. With whom did you confer, Mr. Conroy, with respect [fol. 1610] to making this study?

A. Well, we were originally asked to make the study by Mr. Esmond Phelps. I think Mr. Tims may have been present at the same time. After that time, we have, as we went along making the study, we have had conferences with people throughout the organization of The Times-Picayune Publishing Company.

Q. Now, in the conferences which you have had previous

to the employment for the making of this study in connection with your regular annual audit, did you ever discuss with Mr. Tims or Mr. L. K. Nicholson or Mr. Lagarde or Mr. Adams the question of profits or losses in the operation of the States?

A. I don't recall that we did, Mr. Flurry.

Q. Did you ever discuss, in connection with your recommendation to them with respect to the distribution in these accounts where distribution had not been made as to the effect that that might have upon the showing of a profit or a loss in the States?

A. Mr. Flurry, I think that all of our discussions and certainly the allocation of expenses were on the basis that we said to the Company, here, we have noted that you have not in all instances allocated revenues properly. We have noted some instances where expenses are allocated on an arbitrary ratio, a ratio of 80-20. We think that if you have in mind determining the profits of the two newspapers that you ought to consider it. In other words, we were merely inviting the management's consideration to the problem.

[fol. 1611] Q. Did you discuss with them the showing or profits which the company was making in those conferences?

A. Only if we did, Mr. Flurry, we could have only talked about the profit of the States as it was shown in their annual reports.

Q. Have you ever done the auditing work of The Item Company?

A. I have.

Q. Has that been in recent years?

A. We were the auditors for the Item from 1941 to 1950.

Mr. Flurry: May it please the Court, I think I can save the time of the Court. There is only one other proposition I would like to question the witness about. I prepared a tabulation for that examination and the witness' testimony does not agree with the facts as we had understood them.

I would like an opportunity to check that matter. That is with respect to these agents' commissions. We would like to reserve the balance of the examination which will be very short until in the morning in order to save time of the Court now.

Mr. Wilson: If the Court please, if the Court sees fit to

permit Mr. Flurry to reserve his further examination, we will be glad to reproduce Mr. Conroy; but I would like to reserve all of my redirect until Mr. Flurry has completed his examination.

Mr. Flurry: That is perfectly all right with us.

The Court: I have a question or two I would like to ask this witness.

You have been referring to this suggestion or recommen- [fol. 1612] dation that you made to the Picayune which is contained on page 5 of your Report of May 18, 1945, which suggestion you have testified you renewed the following year.

This survey that you recomended that the Auditing Department make if the Publishing Company decided on the information concerning the separate net income of the two newspapers: Was that survey that you suggested comparable to the investigation which you made which you call your study or special study?

A. No survey was ever made.

The Court: I understand the kind of survey that you had in mind was a study such as you made here.

A. I do not believe that we went into it that far in 1945 and '46. It was merely an observation of what the company was doing and the suggestion that the management consider the whole question.

The Court: Suppose at that time the Company had told you to make this survey which you had suggested their Auditing Department make, would you have made the same sort of study which you have subsequently made?

A. I think I would have.

The Court: That you have described on the witness stand here?

A. I think I would have, Judge. We would have found this: That many of the allocations would have to be arbitrary and perhaps the suggestion would have been made following a real study of the company's operations. It might even have been suggested to the management that [fol. 1613] they might do well to have information respecting revenues as between morning, evening and Sunday, but so many of the expenses would have to be allocated that per-

haps the best method of control would have been to have dealt with the total expenses.

The Court: Well, I have in mind this: I don't know whether you have answered the question.

If you had been employed at that time to make a survey or a study, would you have made the kind of study that you have made since in connection with this suit that you have testified to and described on the stand?

A. Your Honor, I am trying to answer that question as I understand the question. I think that what we had in mind in 1945 and '46 may not have been as extensive as we had to do in order to make this special study.

The Court: Well, if anything, then, your study is more extensive than the one you had contemplated at that time?

A. Even at that, we still feel that you must necessarily come up with allocations that are arbitrary.

Mr. Wilson: You may step down, Mr. Conroy. You will be recalled in the morning.

(Witness excused.)

The Court: Do you have any other witnesses that you want to put on this afternoon?

Mr. Phelps: Yes, Your Honor. We have.

Mr. Kramer: I am afraid so, Your Honor.

[fol. 1614] Mr. Phelps: I would like to call Mr. Forrest Buchanan to the witness stand.

Forrest C. Buchanan a witness called by and on behalf of the Defendants, being first sworn, was examined and testified as follows:

Direct Examination.

By Mr. Phelps:

Q. Mr. Buchanan, will you state your full name and address?

A. Forrest C. Buchanan, 226 Ridgewood Drive.

Q. Is that in New Orleans or Metairie?

A. That is Metairie.

Q. What is your business address?

A. 212 Delta Building. That is at 348 Baronne Street.

Q. With whom are you connected?

A. Standard Register Company.

Q. How long have you been with the Standard Register Company?

A. Since 1941.

Q. And in what capacity are you serving with them now?

A. As Regional Manager, which covers about four states in and around New Orleans.

Q. What states are those?

A. Well, it is all of Louisiana, Mississippi and Arkansas and then Western Tennessee, a little bit of Alabama around [fol. 1615] Mobile and Pensacola, Florida and over to Tyler Texas.

Q. What is the business of Standard Register Company, Mr. Buchanan?

A. We manufacture and sell business forms.

Q. Will you tell the Court what education you have had, Mr. Buchanan?

A. I graduated from Tulane in 1928. Then, I went to night school at both Tulane and Loyola and took some correspondence courses in salesmanship and accounting, various ones. I don't remember all of them.

Q. When did you begin work after you finished your schooling?

A. When did I begin work?

Q. What year was that?

A. In '28, I taught mathematics for one year.

Q. And after that, what did you do?

A. Well, I worked as a chemist for one year. Then, I sold some life insurance. Then, I went back to school to find out what I hadn't studied the first time.

Q. After the second tour of duty in school?

A. That was in about '33 when I entered the office equipment business.

Q. With whom were you connected then?

A. The H. C. Parker Company here in New Orleans.

Q. How long were you with them?

A. Until '41 when I became associated with Standard Register.

[fol. 1616] Q. Could you tell us whether Standard Register Company, in connection with the sale of office equipment and otherwise, makes business studies for various business firms?

A. Yes. We do.

Q. Have you done that sort of work?

A. Quite a bit of it, yes, sir.

Q. For how long have you been doing that type of work?

A. We instituted that program in 1946. We have been making business studies ever since that time in various businesses, not only just one kind.

Q. Would you name some of the local concerns for whom you have made business studies?

A. Well, one of them is The Times-Picayune Publishing Company. We have made a study there. We have made studies at Pan American Life, Maison Blanche, Holmes; Jahncke Service, Pan American Petroleum Corporation, Esso Standard Oil. We have also made some studies for the Item, the Clarion Register in Jackson, Mississippi, Mobile Press Register, and I could go on and name you one hundred, I guess.

Q. I think that is sufficient.

You mentioned that you had made such a study for The Times-Picayune Publishing Company. Would you tell us when that study was made?

A. In 1946.

Q. 1946?

[fol. 1617] A. Yes.

Q. And did you, at my request, make a similar study on classified advertising showing the method of operation at the present time for The Times-Picayune Publishing Company.

A. That is right. During the time after we made the first survey, certain changes had taken place and we made a re-study at your request to bring the procedure study up to date.

Q. Your '46 study was also in classified advertising, wasn't it?

A. That is right.

Q. I show you a document which I will mark D-21 and ask you if that is a copy of the study which you prepared on the method of handling classified advertising in The Times-Picayune Publishing Company?

(The document referred to was marked "D-21" for identification.)

(Document handed to the witness.)

A. Yes. This is it.

Q. And what is the date of that study?

A. March, 1951.

Q. Is that the type of study that you say you——

I might add for the record that Government counsel has had a copy of this study for approximately a week.

Mr. Kramer: That is correct, Your Honor.

By Mr. Phelps:

Q. Mr. Buchanan, does that document which I have [fol. 1618] marked "D-21" represent the study which you made at my request for The Times-Picayune Publishing Company of the flow of classified advertising with that Company?

A. That is right. That shows it.

Q. Did you personally prepare this study? Or was it prepared under your supervision?

A. It was prepared under my supervision.

The method in which we make the study is that we have a young analyst who collects the information and we put it down in the chart form and then check it in detail with the people involved to make sure all the information is there.

Q. Did you follow that procedure in this case?

A. We did, yes.

Q. Can you say whether or not, in your opinion, Exhibit D-21 accurately reflects the method of handling classified advertising within The Times-Picayune Publishing Company?

A. It does. It shows exactly how it is handled.

Q. Did you prepare a similar study for the handling of general advertising?

A. We did.

Q. I show you a document marked "D-22" and ask you if that is a copy of the study which you made on general advertising showing the general advertising with The Times-Picayune Publishing Company.

(The document referred to was marked "D-22" for identification.)

[fol. 1619] (Document handed to the witness.)

A. That is the study, yes.

Q. Does that study marked "D-22" correctly reflect, in your opinion, the handling of general advertising within The Times-Picayune Publishing Company at the present time?

A. It does, yes.

Mr. Phelps: In connection with the testimony of the witnes, I offer in evidence Exhibits D-21 and D-22.

The Court: They will be admitted.

(The documents referred to, marked "D-21" and "D-22" for identification, were received.)

By Mr. Phelps:

Q. Mr. Buchanan, referring to Exhibit D-21, would you explain to the Court the symbols used in connection with that exhibit?

A. We used a modification of the Gilbreth symbols. That is to simplify our own work here and make it easier to follow the chart.

The large double circle shows the origin of the record. The large circle just by itself shows a handling operation or something that you do to a record.

The shaded circle shows an addition to a record. The little circle shows a move from one point to another. The triangle is an inspection operation. I mean: The square is an inspection operation and the triangle is a delay or a filing operation; either intermediate or files, as far as that is concerned.

Q. What is the origin of that set of symbols, Mr. Buchanan?

A. It came from Mr. Gilbreth, almost the first one in the [fol. 1620] work simplication field, "Cheaper By The Dozen" fame.

Q. Referring to Exhibit 21, would you tell the Court what that shows as far as the origin of classified ads?

A. It shows here that there are three possible origins. You see the little double circle up there where they will initiate a two-part form? That is ads that come in over the phone. It shows counter ads here, where people come up to the counter to place an ad. They also write a two-part copy. They may come in from the salesmen; and, in that

case, they will also prepare a two-part form. It may be foreign advertising that will come in through the mail, which is shown down here that the mail comes in, and the form is actually initiated at this point here.

Q. Would you take as an example a classified ad that comes in by telephone and explain to us how such an ad is handled from the time that it is first received until the last operation in connection with that ad?

A. They have a group of telephone operators that listen to the request of the applicant and they will type up at that time a two-part copy. It is dictated by the customer over the telephone. This copy comes down here. You see, it needs to be verified and then it is placed on the spindle right here.

Q. Excuse me. When you say "here," if you expect the record to show accurately what you have in mind, you had better take a pencil and designate the point "here" by some appropriate symbol; otherwise, you ought to identify what "here" means on the chart.

[fol. 1621] A. Well, it is written on the chart that it is placed on a spindle, so it can be removed from that and taken elsewhere.

We will follow it right along and see what happens to it after it is taken off the spindle.

Now, we will follow Copy No. 1 until we get up to this point here and become altogether again.

Q. I am afraid you are using the point "here" without designating it.

A. We will come to this point. Shall we call it "A"? It is separated: solicited from unsolicited ads. If it is solicited, it is put on a tally board. Then, it comes on here where it is sorted by date and by class. They affix the proper stamps to show display, Sunday, etc. It goes to the supervisor and is checked and censored to be sure it conforms with the company policy and better business principles.

The second copy that has been similarly sorted by date is held in a folder, by expiration date, for corrections and then it is—If it is disapproved, then it is held out, both of them, after they have passed the censor.

Then, we place a date stamp, file and initial, to indicate the censoring. It goes to the Credit Department in an entire bundle.

If it is cash, it is held at the register until the customer arrives; that is, arrives to pay for it. Then, they pull it when they receive the payment and then it goes down to Point "A".

[fol. 1622] Now, at this point, we have also the ads that have come in from these other three sources.

Do you want me to follow those?

Q. Suppose you explain those to us, also.

A. Counter ad. We write a two-part copy as dictated by the customer at the counter. If verification is necessary they verify it and place it on a spindle. If it is cash, it goes to the Cashier; they post the cash to the cash book and it goes back to the counter. They separate the two copies.

We will follow copy number one: The censor, and the stamp showing "Approval." Then it goes to the Credit Department, if it is written at the counter.

Now, if it happens to be a Sunday or a Death Notice, from 9:00 to 11:00 p.m., we are going to skip a few operations because it does not have to go to the Credit Department. It goes in automatically over here.

Q. That is what I have in mind. If you will proceed.

A. Number two copy will go to the Phone Room, daily, where it is sorted by date of expiration. Then it is held in a folder. If the Credit Department approves it it will come into point "A" here, with the ad that has come in over the telephone. If a salesman solicited it, and it includes display classified ads, they prepare a rough copy for the solicitation and take the rough copy to the prospective advertiser, and return with approval. They write a one-part copy. This copy will go down here to the Display, is sorted by classification, goes to the Credit Department, [fol. 1623] if it is written by a salesman, and it will also come into this point "A."

The original copy that is prepared by the salesman will go to the Composing Room for art and art work, and cuts and so forth, and stay in the composing room until we pick it up again after this point "A" here.

Now, if it happens to be merely an agate advertising and does not need any art or cuts or things of that nature, they will write a one-part copy that is written and censored

at the time. They write the copy ordered, which is sorted by classification; it goes to the Credit Department for approval and it also comes into this point "A."

On Foreign ads that come in by mail, it is received in the Foreign Department, is separated as to cash or charge and removed from the envelopes, and the envelopes are held here to show the class, the wording, the number of times and the date; and then they pull the first date that the ad appears and the little ad is then returned to the customer through the mail.

Now, if it is a credit ad that comes in through the mail it goes first to the credit department where it will be approved or disapproved. If it is disapproved they show "Cash." It goes back to the Foreign Department; they type a letter form to the customer, and hold until the customer sends in his payment. At that time they can pull it and handle in the regular way as they would if it had been approved.

If it is approved they stamp "Approved" on it and they type a one-part copy order and the one-part copy order, [fol. 1624] together with the bill. The one-part copy order, together with the request of the customer, goes up to Point "A" so that we can proceed there.

If it is Cash—cash, or money order, or check or something of that nature, they type a one-part copy order and post it to the cash book, and the copy will proceed from that point up to this one. They also get a——

Q. I am afraid "that point up to this one" doesn't mean anything in the record. Speak out.

A. In all of these instances we are preparing a copy, or an order, you see, and each time we prepare an order in any of these cases the order has to come over here to point "A" so as to proceed through the regular channels of getting an ad into the paper.

Q. The point "A" is designated, in all cases, on the chart?

A. Designated in all cases; yes, because it is the first time all of these papers will come together again.

Q. If you have completed the explanation down to point "A" will you tell us what happens to an ad after it reaches point "A"?

A. In all cases, regardless how it comes in, they will check

the credit, or be sure that credit has been approved. If it is approved they will post. If it is not approved they will post to a four-part pull-out sheet, forward it to the Classified Manager, Telephone Room, Credit Department Manager, and Credit Department, also, to contact the customer. If it is approved they stamp the time to show approval, check the date of insertion to be sure that off dates are held, and then they will separate this two-part form that was prepared, here (indicating). See, it shows "one", "two", [fol. 1625] and they will travel simultaneously.

Q. You had better say what you mean by "here," or it won't get in the record.

A. They are prepared initially at the Phone Counter, Booth, or by a Salesman, or in the Foreign Department.

Q. You mean at the time the ad is originally received?

A. That's right; at the time the ad is originally received they prepare that form.

Then they separate it and they hold; and the off-dates, they hold 'one' until the proper date and send 'one' to the Composing room. They sort and remove ads calling for Display type. If Display type is required then they will send it to the type setter, get the largest size type, it goes to the next larger size type, get the Classified copy distributed, get his type set and it will again come back with the other ads at point "B" here.

Q. Where have you designated point "B?"

A. "Copy Order and Take Order." Just before the "Galley Boy."

Q. Thank you.

A. If it is agate type they send it to the linotype operators. They set the type and it comes back in with all the other ads at point "B" because we have now set our type or set up our Displays.

These are sorted by classifications and grouped accordingly. Then it goes to the Galley Boy.

Q. Excuse me. I see some symbols up above what you [fol. 1626] have just discussed, starting with the block "Blind." Would you explain what that is?

A. On "blind" ads we have a little additional service that we must render. It is received in the Mail room—the replies are received in the Mail Room, and they are

sorted as to local and foreign. If local and is to be mailed they hold it in a "Local" drawer, and it goes to the Classified Department, inserted in an envelope and send it to Advertising.

If it is Foreign, to be mailed, they hold it in a "Foreign" drawer; it goes to that department, inserted in an envelope. If it is to be picked up they hold it in the "Local" drawer and it is picked up by the local advertiser.

Q. As I understand it you are talking about handling of replies in connection with——

A. I didn't understand you.

Q. —You are talking about handling of replies to the ads?

A. Yes. This is the handling of the replies if they happen to be tied into the ad that is received. Blind ads may be received at any one of the four different ways.

Q. Would you proceed from Point "B" please, Mr. Buchanan?

A. At Point "B" this order we have written back here in several different methods, is used to run a proof. It goes to the proof readers. They hold a copy until the following morning, but if there is an error in it they will send it to the Galley Boy and reset it and it goes back to the proof-readers; the okayed proof goes back to the Galley Boy and the attached okayed proof to the galley.

[fol. 1627] If proof is requested before publication it goes to the Advertising Department and is sent out to the customer. It goes into the Make-up Department then, in which the proof and the order brings in columns—no, the proof is arranged in columns and into complete pages and then it is inserted in a book which is just merely a record that that ad has been handled in regular book form that they write in to show that the ads have been put into complete pages.

The make-up mat and the plate: The plates go to the Press room and then a little insignificant part of the chart here shows that we print a paper.

Now, the plate, for this proof, will hold the pages form for possible changes and it will finally go over here and it is to be removed and set aside and remains in a permanent file.

Shall that be designated by a letter, or something?

Q. I think it is clear what you have said.

A. Our order, at the same time, goes to the Credit Department and they insert it in a book and hold it in the Credit Department to show the advertising dates, and descriptions, and "Hold to be sent to Composing" at 4:00 p.m. That is this insert book. The order will also go to "Sort and Classifications Sequence," to check against marked issue of the paper to identify the ad; and then it is marked, either in a file issue or a "Kill Issue," depending upon whether or not the ad is to be run or not, and it is held for the Composing Department, for possible changes; and then it goes to the Composing room.

This order in the meantime has gone to be marked "Ex- [fol. 1628] piration Date Copy" and the price, and is filed alphabetically.

There is a little dot. We should have put this at the very beginning here: a round dot, with two lines coming out from it. It means, "Alternate courses that may be traveled." As we have here, in this case——

Q. Would you designate that by the letter "C"? Isn't that your next one?

A. (Marking letter "C") Letter "C."

Q. Thank you.

A. If the ad is cancelled it will follow this (indicating) procedure; if the ad is incorrectly printed, it will follow this (indicating) procedure.

Q. You are referring to the upper and lower lines?

A. Supposing we go through the ad that is cancelled. There are two parts. The second part goes to the Classified Department; the first part will go to, depending again upon what time of day it is, if it is between four and five p.m., it will go to the Composing room to "Kill" the ad. It is returned the next day with the insert book and is marked on the "Kill Issue." If it is an off-date, it is held until the effective date of the ad and then it is marked in the "Kill Issue" and is put into the Composing "Kill Ad Copy."

If the ad is printed incorrectly they pull it from the file and write a two-part correction notice. No. 2 is attached to the original order and it is put into an alphabetical file. No. 1 is attached to a clipping of the ad showing the correction on the clipping and it goes to the Composing room, returned to the Credit Department, and goes to the

Classified. If by chance the ad goes through improperly, or gets separated——

Q. Suppose you repeat that for the Reporter. We want everybody else to hear it, too: counsel and the Judge.

[fol. 1629] We pull it on the date of expiration and separate the charge from the cash. If it is foreign cash, it goes to the foreign department, foreign desk there. If it is local cash, it goes to the classified counter. Then it will go to the accounting section to be sorted alphabetically, checked with prices and then rerun a total tape showing the distribution. There is the tape right there. (Indicating on chart.)

Then we will run a total tape by legend breakdown. This tape, together with the original order, will go into the credit department, from the credit department, will go over to the ledger cards and there they stuff the copy with the ledger card.

Here it institutes a new record. That is, we post a ledger and other records, which includes a bill, a ledger sheet, a proof sheet and a second sheet. We will cover the distribution of these at this time. I think it would be proper.

Well, let's get through with this bill that we have here. The bill is posted to a bonus sheet to show the daily bonus on a spread sheet, and it is held for monthly recap for bonuses paid by the auditing department, then it is held for six months and transferred to the file and kept for three years.

Now, let's come down to the origin, of the accounting forms here, which includes a bill, a ledger sheet, a proof sheet and a second sheet. The bill, of course, goes to the credit department. It is sealed and stamped, and goes to the customer. The proof sheet is retained for thirty days to balance the ledger, and then it is destroyed. The second sheet is used to go to the collector, if necessary. The ledger [fol. 1630] sheet is filed in a ledger alphabetically, and it waits in that ledger tray until we get the money in from this bill. The money goes to the cashier, and if it is unidentified, it is referred to the credit department for accounts verification before writing up the cash ticket.

Then we will write up a two-part cash ticket that shows the origin of that record. It goes to the credit department. It is sorted by ledger and alphabetically within that ledger, and they run a total tape by ledger, the tape is balanced

with the ledger card, and then the number one part will come along after it is balanced and it will be filed by date.

The number two part will be inserted in the ledger, post the cash to the customer's account, refile in the ledger alphabetically, and file this number two part and the cash ticket in the alphabetical file.

We have then completed it, because we have instituted an ad over there, and here, in a great majority of cases, we have the money coming back here.

Q. Thank you, Mr. Buchanan. Referring to Exhibit "D-22", I would like to pin this up also. (Pinning up Exhibit "D-22".)

Mr. Buchanan, I wonder if you would be good enough to make a similar explanation in connection with Chart "D-22" dealing with general advertising as handled by The Times-Picayune Publishing Company.

A. In the general ads, they will come into the paper from an agency or an advertiser's contract. That will come in two copies usually, or it will come from general advertising [fol. 1631] mail. In any case, they will go to the mail room and then they get into the general advertising department.

In this particular case here, they will——

Q. Are you talking about the upper line?

A. No, I am talking about the lower line where we have three possible alternatives.

Q. Suppose you designate that with an "A".

A. (Witness doing so.) That is the number two part that does this. If checking with the distributor is necessary, they give it to a solicitor, contact the solicitor for approval, then return with the approval to point "B". (Witness designating point "B" on chart.)

If insertion order is complete with copy records for printing, then it will go to point "C" without any further happenings. If it is a color comic or space reservation, then we will enter that on a comic schedule sheet. They will post the name, the space, the requirements for each publishing date, and that is held on the desk.

If comics is necessary, they will hold until other matters have been handled, such as getting these comics ready, and then it will go up to point "B". If correspondence regarding the quality or position of copy, it will go to the com-

posing room to diagramers, and then after that has been accomplished, it will go up to point "B".

Now, we have all of them ready to go into other phases, and they will go to the other billing department. We are following this number 2 part here.

Q. That is the one starting with point "A"; is that correct?

[fol. 1632] A. Yes, I will follow number 2 part until we come down to part "C" here.

Q. Which is where?

A. Which is right under "Weekly Copy Sheet, Separate for the Picayune and the States".

Mr. Kramer: I didn't hear that answer. I would like to have it read back.

A. Well, following this second part until we get up to point "C",——

Mr. Kramer: Just a minute, Mr. Buchanan. I want what you said before read back to me by the stenographer.

(Answer read by reporter.)

A. That is merely to identify the point.

The Court: The designation is made by the letter "C"?

A. Yes, sir, designated by the letter "C".

Now, first we must see if it is currently listed in A. N. P. A., which is a kind of a credit association. If it is not listed and there is no current contract, it goes to the credit department for either approval or rejection. Then we will follow it over to this point—we will follow it over to where they write a copy order. They show the advertising, the number of lines, the position, copy or ad caption, the date or dates to be run, and then it goes with the display order and we will catch up with that in just a minute. We are going to hold it temporarily in a file tub, filed by dates, and an order will come along again.

If comic inserts are necessary, it will go to the comic book [fol. 1633] insert which will show the name, the size ad to be run. Then we institute a card here on which we post the information for filing. The purpose of that card is merely a control feature to make sure that ads will eventually get into the paper and will be billed.

The insert book is added to at this point, and they post

for the advertisers by date, the size, and all future insertions, and it is held at the desk until it is relieved again—shall we put another letter here?

Q. I think you had better.

A. At point "B". This is another control feature, because after we have gone through this maneuvering here, we want to be sure it gets back.

Now, we have a two-part daily listing to enter the picture at this point here, which is shown on the chart Daily Listing, Part 1 and Part 2. This shows the advertisers, the number of lines, size and position. That is held in the tub file with this daily order that we had back here—I mean the daily order that was written—is pulled in advance of the publishing date, usually one day. It goes to the composing department—that is the second part of this daily list goes together with this display order.

They accumulate the cuts and the mats and they go to order billing. They are put in the file drawer and they are pulled from these listings that we have here in the composing department, and they go together up to point "C", which has been designated.

Now, part 1 of the daily listing will do to the diagramer. [fol. 1634] They have a retail copy order for these diagramers to authorize the work to be done, and he writes position, advertisers, size, on a spread sheet, and the origin of another record here shows that we make a diagram to show the name and the space layout. It goes to the diagramer and he checks off as it is accommodated, goes to the auditor in the billing department and is held until after the run.

The first part of the daily listing, after it has initiated this daily record here showing the diagram, will go to the composing room and it will catch up with all of the other papers at point "C" here.

Now, while we are at it, we may as well dispose of this original copy here, bring it all up to those points. The original copy has gone into the general advertising to the credit department and is stamped Credit Approval, and it is posted on to a record card. They post the name, the rate, the size and the expiration date, and it goes into an alphabetical file. It is held in the alphabetical file until it is released from the part of this copy order at this point.

You want me to designate this point?

Q. I think you had better.

A. It will be released at this point, point "E", then it becomes a control factor to be sure that all of the printing that has been done and all of the advertising that has been produced in the paper is finally done in accordance with the customer's wishes.

This first copy here will go to the general advertising department for possible changes before it goes to the order billing department. In the order billing department they [fol. 1635] will type a card showing the name, size, rate, date, expiration date; the number 1 card is filed in a tube file by months of expiration.

The number 2 card is filed in an alphabetical cash drawer. That will be released from this order at point "F" here.

Q. I think you said tube file. The chart shows "Bob-up" file. What is the difference between a tube file and Bob-up file?

A. Where was that, Mr. Phelps?

Q. I may have misunderstood you.

A. Well, in a Bob-up file, it is filed by expiration date; and the Bob-up, it doesn't actually bob-up, but the expiration date is looked into daily to find out which ad should bob-up on that particular day so that they can be run in the paper, or, in this particular case, so they can be taken from the paper, because it is an expiration bob-up file. Merely a colloquialism.

The number 2 copy then goes to complete as an acknowledgment. They complete a little form letter, and it goes to the advertisers or the agencies. That completes that copy.

Then we have our control features here so that we can catch them later on.

Now, we will follow the order where it comes to the diagramer from the listings and the cuts and mats are all at point "C", and they will show under this weekly copy sheet that there is a listing there and it is listed separately for the Picayune and the States. It shows the advertisers, the number of columns, the number of lines, and it is held for a week to show that the copy was handled. Then we are complete with the weekly copy sheet. When they come [fol. 1636] back with those orders, they go to set the dis-

play type and it will then hold the display type until they accumulate the electrodes, the plates, the cuts and the solution. The plates are made here, if any are necessary. They go to the assembly bank and they will run a proof. They read the proof and then check it for whatever the States might have, a cutter. They will hold it in storage and they will make the page forms. From the page forms, we run a page proof, which is checked and corrected in the composing room.

Then they make page mats and they make the page plates and here we run the paper. After that is done, they retain or break up, depending upon—break up type or portions. Then they will accumulate the copy orders and the two sample copies from the last edition coming here from the run of the paper. We will either destroy the mats—destroy the diagram and hold the mats and the cuts. Then this original order we wrote back here will go into the order billing department, and it is inserted in the book at point "B", and marked "entry", to show actually the ad was checked in the inserts that was initiated back here, initiated in the first part of the chart.

Then we prepare bill sheets on an addressograph. That is merely to get the name and the address of the people who have advertised here. They prepare this bill to show the size of each ad, and they insert the posting tab for each entry. That posting tab is merely a little slip of paper to locate your place in the ledger, and they will circle the entry to show it was posted, and they will hold the order.

Now, the bill sheets that we have prepared here go to the [fol. 1637] checker, they check the sample versus each posting, and remove the tab, and the tab goes back to hold for the next poster, and they hold this for the billing, which is this bill that we have prepared here.

Q. You had better say where. This bill which we have prepared where?

A. That shows the origin right here.

Q. You had better designate it as point "G".

The Court: How is that point described on the chart?

A. Well, we have at this point—the checker has in his possession this bill that has nothing on it except the in-

tomer's name and address, together with this original order that was initiated right here.

By Mr. Phelps:

Q. You had better designate the point.

A. Well, will that be necessary because it is a double circle on here.

Q. Well, if the chart shows it, that will be all right.

A. The chart shows at this particular point we wrote a copy order which shows the advertiser, the number of lines, position, copy or ad caption, date or dates it is to be run. This order, together with the bill, they will check the sample versus each position and remove the tab. I think we went over that. The bill will be held for monthly billing. This contract card which was initiated way back there will apply to the proper rate and extend the total because that has the contract on it. The credit department, the day before the end of each month, they check and extend the totals. It is so checked to indicate the handling, and then they are sent copies of the bill.

[fol. 1638] Number 1 goes to the order billing department, filed by advertiser's name for five years. Copy 1 is accumulated in alphabetical file. They run a total tape of the entire billing. Then they will run a tape showing the distribution of the amount, morning, afternoon and Sunday and so forth.

Then they will pick up this ledger card out of the ledger tray, they will insert the bill for proper posting. Then they will post it, using an Elliott Fisher posting machine to show the total totals, discount, amounts extended, the balance, and we will hold these temporarily until we dispose of this form down here.

They mark these samples, general advertising in red, retail ads in blue, free ads are circled, and they show the lineage. They run a tape for the general ad space, and they will run a tape for the retail ad space. They run a tape for classified ad space, and they run a tape for free ad space. They will hold these tape daily advertising reports until they go to the business manager. He accumulates them, and then he compiles a six months' report which will show all of these things that we have produced at that point.

The Court: What point are you now speaking of? I have lost track of it.

A. We were showing this order that we have down here where we posted it through all of these various breakdowns that are required.

Mr. Wilson: Immediately under point "F", Your Honor.

A. (Continued) Now our ledger card is pulled between [fol. 1639] the first and the tenth of the following month, and if shows from this original card back here that it was posted—it shows the name, the rate, the size and the expiration date from that when picked up—I mean from that card the expiration date calls us to pull this between the first and the tenth of the following month. We have to get the expiration date in there.

We post the number of lines and amount, we check the rates and if an adjustment is necessary, we will issue a debit or credit memo, whichever it is, and will refile this card alphabetically. Our ledger card is then in the alphabetical file inserted in the proper position and it is posted.

This bill that has been posted with Elliott Fisher machine is accumulated, folded, sent to the mail room, where they insert it in an envelope and send it to advertising.

Now the ledger card will show the amount, the date, the expiration date of the ad, and we have sent to the customer a statement showing how much he owes. Then the customer's check comes in and goes to the credit department. They put the check and the envelope together so the cashier will write a two-part cash ticket, showing the name, the total amount and the discount.

The check is held for deposit in the bank, and it is disposed of right there. The information is carried on the two-part cash ticket.

Number 2 will only be used in case we have multiple entries. Then it goes to the credit department and is sorted alphabetically. Of course, number 1 is used for single items, and it goes through the same operation. We use one or the other, depending on whether we have one or two [fol. 1640] entries from them. They run a tape for the total amount and the single item is bound in a book for five years and then is destroyed. The balance that we have in this tape is checked with the balance that is posted to

the ledger card, when that information is taken from the cash ticket, which was written at the time the check came in. Then they hold this ledger card for approximately ten years. They will file the tape that is run here alphabetically for six months and then transferred to a permanent file for three years. Then we have completed taking an ad at that point, and the customer's money has come in here.

[fol. 1641] Q. Let's go back to the point at the top of the page about two feet from the righthand side where it says "Card File Lineage," if you will. It is near Point E.

The Court: Just to the left of that in the middle of the page where you say "Run tape showing distribution of amounts, a. m., p. m., a. m. Sunday," etc.

Mr. Phelps: Yes.

The Court: Does that term "amounts" have to do with dollars and cents or with lineage? What is that? "Run tape showing distribution of amounts"?

A. That is dollars and cents. That is a tape showing distribution of all funds.

The Court: Proceed.

Mr. Phelps: If the Court please, that completes the examination of Mr. Buchanan, in chief. I don't know whether Your Honor wants to stop at this point or have cross examination.

The Court: Will your cross examination be lengthy?

Mr. Phelps: I would much prefer to let Mr. Buchanan go back to his work by cross examining him now, so he doesn't have to come back tomorrow. It would be a great convenience to him, because he has an appointment at the University of Mississippi for a lecture; so, if you could, we would appreciate it.

Mr. Kramer: All right. We will proceed. I only have a few questions.

The Court: All right.

[fol. 1642] Cross-examination.

By Mr. Kramer:

Q. Mr. Buchanan, have you or any person under your supervision made studies for any other newspaper company than The Times-Picayune Publishing Company?

A. Yes, sir. I think I stated earlier that we had made a study for the Item, Mobile Press Register, Clarion Ledger.

Q. Thank you. Can you think of any others?

A. That have been done under my supervision?

Q. Yes.

A. I can't think of any others right now.

Q. You spoke of the Clarion Ledger. Can you tell us where that is.

A. That is in Jackson, Mississippi.

Q. Did you have anything to do with the adoption by The Times-Picayune Publishing Company of the unit rate for General Advertising?

A. No, sir.

Q. I notice that this chart marked "D-22" and the previous one marked "D-21" say in the far lefthand corner March, 1951, rev. April, 51:

What does that mean?

A. As I made the statement earlier, it is our practice to make a chart and then we check each detail with each member involved; and, if there are any changes that should be made in order to reflect the exact procedure that is followed, then we will revise it as it was shown here. [fol. 1643] This chart was revised, because there were some errors in it.

Q. Now, you spoke of making another chart on classified in 1946. Is that right?

A. Yes, sir.

Q. Did I understand you correctly?

A. Yes, sir.

Q. Have you ever made any other charts for The Times-Picayune Publishing Company than D-21, D-22 and charts you have brought with you on classified made in 1946?

A. No. That is all.

Q. You have made no study of the flow of general advertising prior to 1950. Is that it?

A. No, none. We have some other charts for The Times-Picayune Publishing Company. That wasn't true. I had forgotten for a moment there. We made some study in the Distribution Department.

Q. Who is Mr. Coleman? What department is that?

Mr. Phelps: Circulation.

A. In the Circulation Department.

By Mr. Kramer:

Q. At one point, Mr. Buchanan, and I frankly couldn't see it, you said: "We retain or break up the type, depending upon" and you never completed your thought.

Do you remember having said that? And can you explain what you were about to say and changed your thought?

A. Yes. That was at this point here (indicating); where [fol. 1644] I said "Destroy diagrams; hold the mats and the cuts." You destroy the diagrams but hold the mats and the cuts.

Q. You mean, you hold the mats and cuts in case the same ad is run over again at some future date? Or don't you know?

A. I don't know exactly what they do with those. As far as we are concerned, when that thing hits into a file or final resting place, we are through with it. We know where it can be located.

Q. When you say "we" whom do you mean? You say, "We are through with it". Who is "we"?

A. The Standard Register Company.

Q. Now, you spoke of a business manager in discussing D-22. Who is he? What is his name?

A. You mean some business manager that we mentioned in this chart?

Q. Yes. You used the words "business manager". I was unable to tell where you were, although you were on the righthand side of the chart and I was wondering what the name of the business manager was.

A. In this particular chart, we started with Mr. Ladreyt and Mr. Ladreyt told us the departments that would be involved and showed us the paper that was followed and we followed the papers and observed each operation that they went through until they finally were disposed of.

Mr. Phelps: I think what Mr. Kramer has in mind is to the right of and at the bottom of the page from "F." Point "F".

Mr. Wilson: It goes to the business manager.

[fol. 1645] By Mr. Kramer:

Q. My question is: What is his name?

A. This will point it out. The business manager gets these reports. He gets a tape showing the general advertising. He gets a tape showing the retail advertising space. He gets a tape of the free space. He gets a tape showing the classified space. These are typed daily and distributed. This report is returned to the business manager who accumulates them. The business manager: I don't know offhand who that is.

Q. Thank you. Now, you spoke of free advertising. Did you mean advertising for which no compensation is given to the company by that term?

A. That is right. I think that includes death notices, doesn't it?

Q. Now, you said that you hold the ledger card for about ten years. Are you familiar with the length of time correspondence relating to classified advertising would be retained by the Company?

A. No. I am not, because we were interested only in reviewing the happenings of the actual forms in here. We only wrote one letter.

Q. Do you know the answer to this question, Mr. Buchanan? If Mr. Tims wrote a letter in 1935 about classified advertising rates, would that letter probably now be in existence? Or would, in the normal course of events, that letter have been destroyed by this time? It is now 1951.

A. That is entirely out of the scope of our investigation.

Q. Thank you. You don't know, in other words?

[fol. 1646] A. No.

Mr. Kramer: Now, if Your Honor will indulge me just a moment, I might have one more question.

By Mr. Kramer:

Q. Are you familiar with the anti-trust filed against the Standard Register Company in 1946 in which the Company was charged with requiring their customers using their registrator platens to——

Mr. Wilson: I object.

Mr. Kramer: Wait until I finish the question.

By Mr. Kramer:

Q. —requiring customer using their platens to purchase paper from Standard Register Company?

Mr. Wilson: I object to the question. I see no bearing that that question has upon any issue in this law suit. It is irrelevant and immaterial.

Mr. Kramer: The question is designed to show bias, if the Court please, but under the circumstances, I withdraw it.

The Court: Very well.

Mr. Phelps: Does that complete your cross examination?

Mr. Kramer: Yes.

Mr. Phelps: We have no further examination, if the Court please.

(Witness excused.)

The Court: We will recess until tomorrow morning at 10:00 o'clock.

(Whereupon, at 5:05 p.m., a recess was taken until Tuesday, May 15, 1951, at 10:00 o'clock, a.m.)

[fol. 1647] PROCEEDINGS

(The trial was resumed, pursuant to adjournment, on Tuesday, May 15, 1951, at 10:00 o'clock, a.m.)

COLLOQUY BETWEEN COURT AND COUNSEL

Mr. Kramer: The next point I want to raise is that I have a vague recollection that I was asked (but I cannot find it in the record) by the Court whether or not we had a witness coming from Chicago; that I replied, "No," that it was not necessary to call him. What I meant to say was it was not necessary to call the witness from New York that I had told Your Honor about. We do still plan to call the witness from Chicago on rebuttal.

I am handing the Reporter, in a moment, additional corrections which Mr. Wilson has kindly been able to approve, but there are two we would like to ask Your Honor about.

The first is on page 989, line 1. The transcript reads "write," and we think it should read "bring."

The Court: Are you in disagreement about that, Mr. Wilson?

Mr. Wilson: Sir, I just don't know. It changes the sense of it. I don't know what he said. I am perfectly willing for him to check the Reporter's notes, or if Your Honor—I really have no objection, if Your Honor thinks that the other is proper, but I don't know.

The Court: It seems that "bring" is the proper word. I see no objection to changing that word "write" to "bring."

Mr. Wilson: Very well.

Mr. Kramer: On page 1097, if the Court please, line 6, [fol. 1648] I think I can forget that. Just a moment. (Reading.) No, I can't. That is a clear place where the Reporter did not understand me. On 1097, line 6, the following sentence by Mr. Kramer occurs: "He says the States has different Society Editors than the Times-Picayune because they are printed at different times of the day, and the news breaks at different times of day, whereas I suggest that the Government Exhibit 43 has nothing to do with why they have separate Society Editors."

What I said, and it is my firm recollection, is "has another view of why they had different Society Editors."

If it had nothing to do with it, I wouldn't have been up there talking.

The Court: Have you checked the Reporter's notes?

Mr. Kramer: No, we haven't.

The Court: What is Government Exhibit 43?

Mr. Kramer: Government Exhibit 43 is the letter in which Mr. Swayze discusses the Society Editor of the States.

I am perfectly willing to strike the whole sentence because I got nowhere with it. But I don't want to be understood as having admitted that "43" has nothing to do with the very thing I was contending it had to do.

The Court: I think the remark by the Court immediately following that would bear out your view.

Mr. Kramer: Yes, it does. So that "nothing to do with" should read "another view of", on line 6.

The Court: What is your recollection of what was said?

Mr. Kramer: In place of "nothing to do with", I said, [fol. 1649] according to my best recollection, "another view of."

The Court: Does the word "has" belong there?

Mr. Kramer: Yes. "Exhibit 43 has another view of."

Page 1385 is the last one we have to take the time of the Court with: line 18. My best recollection is that I said, "could do very well if the rates were changed," instead of "if they were changed." Again, it is of no consequence except the sentence is utterly meaningless unless it is changed, and I am not willing to stipulate that I make utterly meaningless statements.

The Court: I have seen a few in here by the Court which are utterly meaningless.

I see most of these changes you have suggested are remarks by you. I am wondering if the defendants are checking their statements, and I am wondering if anyone is checking the Court's statements for errors. I have not.

Mr. Wilson: I am perfectly willing to concede, Your Honor, some of my statements may fall in the same category as these Mr. Kramer is changing, but I see nothing to be accomplished by the changes.

Mr. Kramer: This correction, if the Court please, falls in a different category than the other two. The other two are absolutely firm. I cannot say that here. Here, I am trying to make myself look a little better than I was. So I am perfectly willing to drop it.

Your Honor raises an interesting point about——

The Court: "They were changed." We had been talking about rates previously, had we not?

[fols. 1650-1702] Mr. Kramer: That is the trouble, Your Honor. I am afraid we weren't, and that is why—I don't want to press the point.

The Court: Well, I don't see that it hurts anything if it stands as it does.

Mr. Kramer: I don't think it does, either.

I think that is all, Your Honor. I am now going to hand to the Reporter an additional sheet of corrections which have been agreed to between and among counsel.

Mr. Wilson: Will you furnish me a copy of that.

[fol. 1703] Mr. Wilson: If the Court please, I think that is the end of that line of testimony. I have had all I want.

[fol. 1704] Mr. Kramer: If the Court please, I move to strike all the testimony submitted by the Defendants on the news boy issue thus far, except for the testimony of the last witness, on the ground that it does not show provocation by the Item.

Now, I ask Your Honor's indulgence for guidance. Is that the kind of motion that really goes to the weight? I should suppose it goes to the admissibility.

If Your Honor would prefer that it be argued all in a batch at the end of the case——

The Court: Whatever it goes to, it is overruled.

Mr. Wilson: Do you want to proceed with Mr. Conroy?

Mr. Flurry: That is all right.

Mr. Phelps: If the Court please, may I inquire if the Government thinks they will take the balance of the moruing session. I would like to produce Mr. Healy, if we have time this morning.

Mr. Flurry: I don't think our continuation of the cross will be very lengthy.

GEORGE E. CONROY resumed the stand and testified further as follows:

Cross examination (Continued.)

By Mr. Flurry:

Q. Mr. Conroy, you testified yesterday with respect to the account carried on the books of the Company with respect to Mats, Cuts and Metals Sold.

Could you state to the Court in what account and how [fol. 1705] that account was carried?

Mr. Wilson: Mr. Flurry, do you mean on the books of the Company?

Mr. Flurry: On the books of the Company.

A. That account is carried on the General Ledger of the Company as Mats, Cuts and Metals Sold, including all income from those sources.

By Mr. Flurry:

Q. Is that also true as to waste paper and claims accounts?

A. The waste paper account is in a separate account and the claims is in a separate account in the General Ledger.

Q. Do you have your work papers for the study made in this year that we referred to yesterday?

A. I don't have them at the moment, Mr. Flurry. I suppose they could be obtained.

(Documents handed to the witness.)

Q. Now, will you refer to your work papers for 1949, in which you show the total Company profits before general and administrative expenses.

A. Yes, Mr. Flurry.

Q. The Reporter has reported, Mr. Conroy, that in your testimony you stated the total profits before administrative and general expenses for the year 1949, that is, for the combined company, was $2,059,552.23.

I will ask you to check and see whether or not that figure [fol. 1706] is correct according to your work papers for the year 1949.

A. For the year 1949, the total profit of The Times-Picayune Publishing Company before general and administrative expenses and exclusive of income from investments was $2,958,552.23.

Q. So that is the correct figure and this appearing in yesterday's transcript is in error. Is that right?

A. Mr. Flurry, I am giving you now——

Q. That is the correct figure you have just given us?

A. Yes.

Q. Now, will you refer to your work sheets for the year 1948 and will you state for the year 1948 the total expenses which were allocated in your study to the States, daily?

A. $1,940,298.20.

Q. Now, will you state the total radio expense which your study shows for 1948?

A. $127,581.88.

Q. Is that 1948?

Mr. Wilson: I think he has the wrong papers.

(Documents handed to the witness.)

A. I am sorry. I gave you the incorrect figure.

By Mr. Flurry:

Q. Will you give us the correct figure?

A. It is $209,875.46.

Q. Now, will you give us the total company expenses for 1948?

A. The total expenses of operating departments, ex-
[fol. 1707] clusive of general and administrative expenses, is $8,432,741.21.

Q. Now, for the year 1948, will you give us the amount of general and administrative expenses which were not allocated?

A. $763,106.69.

Q. Now, will you turn to your work sheets, Mr. Conroy for the year 1949.

(Document handed to the witness.)

Q. (Continuing.) Please state the total expenses before general and administrative expenses for the combined operations of the Company for 1949.

A. The total expenses, exclusive of general and administrative expenses, for the year 1949 are $9,352,677.47.

Q. Now, will you give us the same expense item for the daily States, only.

A. $2,066,229.48.

Q. Will you give us the radio expense before general and administrative in 1949?

A. $198,501.25.

Q. Now, will you give us the amount of general and administrative expenses which you did not allocate in your study for 1949.

A. $813,463.11.

Q. Now, will you turn to your work papers for 1950.

(Document handed to the witness.)

A. I have them.

Q. Will you state the expenses for the combined opera-
[fol. 1708] tions of the Company prior to general and administrative expenses for the year 1950.

A. Total operating expenses for The Times-Picayune Publishing Company, exclusive of general and administrative expenses for the year 1950 is $10,399,605.26

Q. Will you give us the expenses before general and administrative for the daily States, only?

A. $2,262,420.68.

Q. Will you give us the corresponding figures for the radio operations for 1950?

A. $211,516.32.

Q. And will you give us the amount of the unallocated general and administrative expenses which you found in your study for 1950.

A. $925,242.98.

Q. Mr. Conroy, did you assist the Company or did anyone from your office assist the Company in making a report to the Federal Communications Commission with respect to the operations of the Radio Station WTPS?

A. We did not.

Q. You don't know anything about those schedules?

A. We do not.

Q. Will you please refer to Government Exhibit 8 and refer to the balance sheet marked Exhibit "A" as part of Government Exhibit 8 and state what is included in inventories.

A. Under Inventories, we have newsprint paper in the [fol. 1709] amount of $481,133.24 and supplies, $38,864.79.

Q. It is true, then, is it not, Mr. Conroy, that The Times-Picayune Publishing Company does not have any inventory of products produced by the Company?

A. Mr. Flurry, I am not sure that I understand what is meant by "products produced by the company".

Q. In the sense that any plant engaged in the production of products would have.

A. If you are asking me: Do they have any inventory of newspapers, I think the answer is "No".

Q. In other words, the only inventory which they have are products which are used in the publication of the paper and not products produced by the Company, itself? Is that true?

A. I think that is a correct statement, Mr. Flurry.

Q. Now, yesterday, Mr. Conroy, I asked you this ques-

tion: Have you ever in your experience distributed general and administrative expenses in cost accounting?

I read you your answer:

"A. I can't recall that I ever had occasion to distribute general and administrative on cost accounting, because cost accounting, as I have understood the term, relates primarily to the production cost of various products manufactured by a company; and, as I stated before, general and administrative expenses are not usually included in such costs, because then they would form the basis of computations of inventory valuation and business men do not believe that they form part of [fol. 1710] the valuations for inventory purposes.

"Q. How do officers' salaries go into inventory valuation?

"A. Officers' salaries: If officers' salaries were included in the cost of manufacture of an item, they would become part of the inventory valuation if the value is based on the cost of production."

Now, since The Times-Picayune Publishing Company, Mr. Conroy, does not have any inventory of products produced by the Company, would your answer that general and administrative expenses are not usually included in production costs, because they would become part of the inventory valuation be the same in the publication of newspapers by The Times-Picayune Publishing Company?

A. My answer to that question, Mr. Flurry, would be that general and administrative expenses are not ordinarily allocated and that under any involved theory of allocation that may be devoloped, it would still not alter the fact that those are the total general and administrative expenses that must come from the aggregate profit from operations.

The Court: Let me see if I understand the Government's position with respect to this failure to distribute general and administrative expenses.

Is it the Government's position that the Publishing Company failed to make that distribution because they did not want to know that they were losing money on the States? Or is it the Government's position that they should have [fol. 1711] been interested in finding out?

Mr. Flurry: We think they should have been interested in finding out, Your Honor.

The Court: Is it your position that they knew or should have known? Suppose they didn't care whether they did or not? Why should they have been interested in it?

Mr. Flurry: The proposition here, Your Honor——

The Court: Does the Government want them to be interested?

Mr. Flurry: We are undertaking to arrive at the proposition alleged in the Complaint as to whether or not they were operating at a loss.

Now, it is our contention that before you can say that they were not operating at a loss that you must take into consideration the fact that they had approximately 26 per cent, as Mr. Conroy testified yesterday, of the total profits which are shown in their statements represented by an undeducted item of general and administrative expenses and, regardless of whether there may be any criticism of the Company as to whether or not it desired or did break down those costs, the question is as to whether or not it is proper to include those items as a cost item in determining whether or not there was a loss. You can't determine whether or not the States was operating at a loss or profit without taking into consideration those items, which is a very large item in the operating expense.

The Court: It seems to me that you are contending, if [fol. 1712] they would have done certain things, they would have found out what the Government says they should have found out.

Mr. Flurry: That, Your Honor, is separate and apart from the question of whether or not they knew they were operating at a loss.

The first question is: Did they operate at a loss?

The second question is: Did they know or should they be charged with knowing that they did operate at a loss?

The proposition here is directed to the question: Did they operate at a loss?

The Court: All right.

By Mr. Flurry:

Q. Where you have no inventory of products produced by the Company, as is true in the case of The Times-Picayune Publishing Company, would it be proper accounting procedure to distribute general and administrative costs to the different papers, assuming that the Company published two separate newspapers?

A. If management wanted that information for statistical purposes, Mr. Flurry, it could be done.

Many managements do not feel that it develops any additional information to them in the management of the newspaper and in the determination of whether it is making or losing money and they, therefore, do not do it.

Q. But if the Company desired it, it could be done? Isn't that true?

[fol. 1713] A. If the Company decided that on some statistical basis, they would want to apportion general and administrative expenses, some elaborate theory of apportionment may be developed, but I don't believe that it would produce accurate results.

Q. Now, I asked you yesterday, Mr. Conroy, with respect to cost accounting, a question somewhat similar to the one I am going to ask you now. This has no application to cost accounting as a special kind of accounting.

Have you or Haskins & Sells, to your knowledge, ever made an allocation of general and administrative expenses in your or the firm's accounting work?

A. Mr. Flurry, of course, our clients do the bookkeeping. We do not do the bookkeeping. We examine the general accounts of the company and must deal with the system of accounts which we find in each company.

I am satisfied that there must be among some of our clients some who feel that general and administrative expenses are to be allocated on some basis that management may have in mind; but, largely, I do not think it is so.

Certainly, our clients in departments stores do not feel that general and administrative expenses need be allocated to the ninety or hundred departments that they operate to determine whether or not they are operating at a profit or a loss in each of those departments and I think, as a matter of fact, they do not.

Likewise, in retail chain stores with which we deal, a [fol. 1714] similar situation is present, where they have one hundred or one hundred fifty retail grocery stores. I know of no allocation being made by those clients to each individual store for the purpose of considering whether the store is making a profit or a loss.

Q. Do you do the accounting work for the Great Atlantic and Pacific Tea Company?

A. We do not.

Q. Are you ever consulted with respect to methods to be used in allocating general and administrative expenses by any of your clients?

A. Mr. Flurry, such questions may have been asked of me from time to time. My own feeling largely has been throughout all the years of my experience that no useful purpose is served in the distribution of general and administrative expenses, and I have had occasion on many occasions to so advise my clients.

Q. Did you advise The Times-Picayune Publishing Company to that effect before this case was filed?

A. Beg pardon?

Q. Did you advise The Times-Picayune Publishing Company to that effect before this case was filed?

A. We did not.

Q. In other words, you suggested that an allocation be made to the—by the Times-Picayune Publishing Company, did you not?

A. Mr. Flurry, I think we simply suggested that the management give consideration to the accounting system which they were then employing.

[fol. 1715] Q. Isn't it a fact that in your 1946 letter you said that "in connection with the above," that is, referring to allocation of expenses which you had mentioned in your 1945 letter—Did you not say that: "In connection with the above, we reiterate the recommendation made in our report dated May 13, 1945"?

A. We said that.

The Court: What did the report of 1945 say, though? It said: "If you are interested in having this information, we suggest you make a survey". Isn't that correct?

A. That is correct, Your Honor.

By Mr. Flurry:

Q. Mr. Conroy, do you have a written contract with The Times-Picayune Publishing Company with respect to the accounting work which you are to do for them?

A. Mr. Flurry, we never have written contracts with any of our clients with respect to the services which we are to perform.

Mr. Flurry: Pardon me.

Mr. Wilson: May I say to the Court I am still producing documents which I was called upon to produce at nine o'clock last night.

Mr. Flurry: May it please the Court, this document was produced once before and we returned it to Mr. Wilson last Saturday.

The Court: The Court thinks your cooperation is commendable, Mr. Wilson.

Mr. Flurry: We think so, too, Your Honor.

By Mr. Flurry:

[fol. 1716] Q. Mr. Conroy, to refresh your recollection, I show you a document which purports to be Minutes of the Board of Directors Meeting of The Times-Picayune Publishing Company held at 2:00 o'clock, p. m., on December 12, 1948 and refer you to the paragraph near the top of the last page.

(Document handed to the witness.)

A. Do you want me to read it to myself?

Q. Yes.

[fol. 1717] Q. Now, I ask you if it is true that you have any written agreement with the Times-Picayune Publishing Company with respect to the audits of their records?

A. Mr. Flurry, from time to time I believe it has been our custom to address a letter to The Times-Picayune Publishing Company in which we have suggested the arrangements for our fee for the year then ending, and it is possible that this resolution of the Board refers to the letter which we wrote.

In my own thinking, we have not regarded those as contracts, Mr. Flurry.

Mr. Flurry: May it please the Court, we are not interested in delving into the amount of the fees in this case in any respect. We are not even asking that that be revealed to us. It may be revealed if defendants so desire, but we feel that we are entitled to that correspondence with respect to the terms of the employment as to what kind of audit was to be made by Haskins & Sells.

The Court: I think the best evidence of what kind of audit was to be made was the kind of audit that was made. This contract you are injecting into the future might be something else again.

As I understand it, the audit has been made, it has been completed, it is part of the record, and some of the figures you have given here are results of those audits, are they not?

A. The figures that I have given from Government's Exhibits?

The Court: You have had your work papers in connection with some of those audits, have you not?

[fol. 1718] A. The work papers here have referred to some special study that we made.

The Court: The letters in which you made the recommendation are part of the record, are they not?

A. Yes.

The Court: What purpose can be served by evidence of what sort of audit was intended to be made? The fact that the client accepted what was done, would seem to me to put an end to the matter.

Mr. Flurry: On direct examination, Your Honor, the witness was examined as to what was included as part of his audit and what was attached merely as supplementary because it was carried in the records of the Company. This proposition is directed to a determination of whether or not all of this work was a part of the duties of Haskins & Sells as the auditor for the Company.

The Court: Well, who else could they have been doing it for except the Company? I don't understand it.

Mr. Flurry: Well, the witness has testified, in effect, Your Honor,—I don't remember his exact testimony—but he has testified in effect on direct examination that this

breakdown with respect to the Times-Picayune morning and Sunday and the daily States was not a part of his official audit of the record, but he merely put it in there for comparison purposes, since the Company's accounts were set up in that way, in order that they might follow his figures, that is, the combined Company figures as compared with the breakdown.

The Court: Well, aren't the books set up that way?

[fol. 1719] Mr. Flurry: Yes, Your Honor.

The Court: Well, what is the difference then? I don't think you can find the books are set up in a different way by getting out the contract of employment or the letters which passed between him and his client.

Mr. Flurry: Well, I think, Your Honor, that the terms of the auditing agreement as to what he was employed to do would determine whether or not he simply put them in there for references by management or whether that was a part of his job as auditor, and, therefore, he did it as auditor.

The Court: I don't get the distinction yet.

Mr. Wilson: If the Court please, these records, as well as all records of The Times-Picayune Publishing Company, have been available to Mr. Flurry's office for approximately while the demand was made last night at 9:00 o'clock for this letter, and I see no relevance to it. But rather than have the suspicions that are apparently in Mr. Flurry's mind contained in the record, I would be very happy to have him look at the letter and see what is in it.

Mr. Flurry: We have no suspicions, Your Honor——

The Court: I just don't understand. This man has testified that his firm was employed to make an audit, and they made an audit and those audits have been made available to the Government. He says he made these comparisons for the benefit of his client. He could not have made them for anyone else's benefit unless he was just curious himself, which I doubt. He says he made the distributions on the [fol. 1720] basis of which the Company kept its books. That has been verified by the Company. If there is no objection to the letter, why the Court will make none.

Mr. Wilson: Your Honor, I reserve my rights to object to the use of it. I am perfectly willing for him to read it and see what is in it.

Mr. Flurry: We withdraw the request, Your Honor.
The Court: Very well.
Mr. Flurry: You may examine.

Redirect examination.

By Mr. Wilson:

Q. Mr. Conroy, you were asked on cross-examination as to whether or not you prepared the Income Tax returns of The Times-Picayune Publishing Company and I believe you said that you did.

A. That is correct.

Q. Now, referring to Government Exhibits 6, 7 and 8, which show as a part of your report some allocation of revenues and expenses as between the morning and Sunday editions and the evening edition, do those allocations or those figures have anything to do with the figures that you used in preparing the Income Tax returns?

A. None, because in the preparation of the Federal Income Tax Return, we report the aggregate income of The Times-Picayune Publishing Company and its deductions in the proper categories, as shown on the Income Tax Returns.

Q. In connection with those Income Tax Returns, I un- [fol. 1721] derstand that it is your practice to reallocate certain items that are on the reports, which are Government Exhibits 6, 7 and 8, shown as general and office expenses, it is your practice to reallocate some of those items to operating expenses, is that right?

A. The Income Tax Form contains one line which says: Gross Receipts where inventories are not a material factor, less cost of operations, and in reporting the total amount of cost of operations, as a deduction from the gross receipts, we use the total expenses of the operating department of The Times-Picayune Publishing Company, to which was added certain of the items that were included in the Company's classification of general and administrative expenses.

Q. Well now, are the items which you removed and charged to operating expenses on the Income Tax Returns substantially the same items that you removed from general

and administrative expenses and allocate amongst your operating expenses when you made this special study at the request of the attorneys for The Times-Picayune Publishing Company?

A. They are substantially the same items.

Q. So the figure which you read to Mr. Flurry this morning, as being the general and operating expenses, I mean the general and administrative expenses, had deducted from it substantially the same items that you deduct from general and administrative expenses in preparing the Income Tax Returns?

A. That is correct.

Q. Mr. Conroy, there has been some discussion in regard [fol. 1722] to the Advertising Commissions. Will you explain to the Court in the first place, where the Advertising Agency representing the advertisers, where his commission, where he gets it and where it is charged? This is on general advertising.

A. Well, the advertising agency representing the advertiser gets his commission from the advertiser.

Q. But doesn't that come out before the bill is paid to the publisher?

A. Yes, it does. That item doesn't enter into the gross operating revenues of The Times-Picayune Publishing Company.

The Court: As I recollect the testimony, the publisher bills the Advertising Agency 85 per cent of the advertising rate, and the Agency then bills the advertiser 100 per cent, is that correct?

A. That is right.

The Court: The commissions never get into the revenues, that 15 per cent?

A. No, that never gets into the revenues of The Times-Picayune Publishing Company.

By Mr. Wilson:

Q. Now, there is an additional six per cent that has been referred to here as the commission of Jann & Kelley on general advertising. How is that reflected in the Company's books?

A. It is charged to the expenses of the advertising department.

Q. And how is it reflected as between the revenues of the various editions, the six per cent?

[fol. 1723] A. The expense is charged on the basis of the revenues to which it applies.

Q. Well now, for example, in 1949, when there was no unit rate in effect, and an advertiser bought general advertising in the States and Jann & Kelley was entitled to a commission on that, say, 10,000 lines of advertising placed in the States, now where would Jann & Kelley's commissions be charged?

A. Expenses of the advertising department. If the Company made an allocation, it would have been, I think, on that arbitrary formula.

Q. No, I am talking about general advertising, Mr. Conroy, and an advertiser buys 10,000 lines in the States. Now isn't the Jann & Kelley six per cent commission deducted from the revenues of that 10,000 lines?

A. It is charged as an expense, is my recollection, Mr. Wilson.

Q. Against that particular advertising?

A. Yes.

Q. But now that it is sold on a unit rate, those expenses are divided on the formula that has been established?

A. Yes.

Q. And the commissions that show up in Government Exhibit 8, I believe it is the 1949 one, as commissions, were the commissions of Mr. Binnings here who was operating at that time only for the morning edition and Sunday edition, am I right?

[fol. 1724] A. For the year 1948 and 1949, the items shown in the Government Exhibits were special commissions to Mr. Binnings and they all apply to the morning and Sunday editions of The Times-Picayune Publishing Company.

Q. And in 1950, Mr. Binnings had commissions that were distributed because he was taking advertising in all three editions, was he not?

A. He was, and in those instances, his commissions appli-

cable to the States' advertising were charged against the States.

Q. Now, you have given Mr. Flurry a number of figures here this morning, and I want the record clear. Am I right that those figures that you read from the various work papers were work papers which you had prepared in connection with a study which the attorneys for The Times-Picayune Publishing Company had asked you to make?

A. All of the figures were obtained from those work papers, Mr. Wilson.

Q. And the study which you made, I want you to state for the Court whether, in your opinion, that study indicated that the morning edition, the evening edition and the Sunday edition, if we consider them separately, were operated at a profit for the years 1948, 1949 and '50?

A. The work schedules indicated that for each of the years, '48, 1949 and '50, each of the editions, morning, afternoon and Sunday editions, disclosed a profit before the deduction of general and administrative expenses.

[fol. 1725] Q. And I want you to state whether, in your opinion, to properly determine even as between editions, whether they were operating at a profit or not, you should have eliminated the Sunday edition and divided the profits from that edition between the Times-Picayune and the New Orleans States?

A. Mr. Wilson, I am not sure that I understood correctly that question. Would you mind asking it again?

Q. Perhaps I can rephrase it. I want you to state whether, in your opinion, to properly determine, if you had to determine the revenues of the Times-Picayune and to determine separately the revenues of the New Orleans States, state whether in your opinion the proper way to do it would be to take the seven days of operation of each paper, considering the Sunday paper as being a part of both the Times-Picayune and a part of the New Orleans States?

A. It seems to me that we should have to account for every day in the week, every month in the year. That is the answer to the question.

Mr. Wilson: No further questions.

Mr. Flurry: No further questions.

(Witness excused.)

The Court: Court will be at recess, Gentlemen, until 2:00 o'clock.

[fol. 1726] AFTERNOON SESSION—2:00 p. m.

Mr. Phelps: Mr. George Healy, please.

MR. GEORGE HEALY, a witness called by and on behalf of the defendants, having been previously sworn, was examined and testified as follows:

Direct examination.

By Mr. Phelps:

Q. You are the same Mr. Healy who has already testified in this lawsuit?

A. I am, sir.

Q. What was your first experience in the newspaper business, Mr. Healy?

A. As a carrier for the Natchez Evening News, in Natchez, Mississippi.

Q. You were a carrier?

A. That is right, sir.

Q. Have you had any additional newspaper experience in addition to being a carrier?

A. I would say about thirty-three years of it; yes, sir.

Q. Would you tell us, generally, what your experience in the newspaper business has been?

A. For several years I was a mail room employee and also a high school reporter for the Natchez Democrat, after I left the Natchez Evening News. Then, for four years, when I was in college, I worked for the Jackson, Mississippi, Daily News, the Memphis Commercial Appeal, the Birming-[fol. 1727] ham Age-Herald, the Associated Press, Mobile Register, and several other newspapers, including the Philadelphia Public Ledger, as a correspondent.

After I recieved my college degree I joined the staff of the Knoxville Sentinel, in East Tennessee, and remained

there until November, 1926, when I joined the staff of the Times-Picayune as a reporter. I have been with the Times-Picayune continuously since 1926, with the exception of a period during the War when I was in the Government.

Q. Has your experience been on the business side or the editorial side?

A. On the news and editorial side.

Q. And what is your present position with The Times-Picayune Publishing Company?

A. I am Managing Editor of The Times-Picayune and a Vice President of the Company.

Q. How long have you been a Managing Editor?

A. I am in my sixteenth year as Managing Editor.

Q. Of the Times-Picayune?

A. Of the Times-Picayune and Times-Picayune-New Orleans States, the Sunday paper.

Q. Are you a member of any professional or journalistic societies?

A. Yes, I am a member of Sigma Delta Chi, a professional and journalism fraternity, the Associated Press Managing Editors Association, and the American Society of Newspaper Editors.

[fol. 1728] Q. Mr. Healy, I would like your opinion on the availability of editorial facilities with which the Item Company, or any other person, could start a morning paper in the City of New Orleans, Louisiana, at the present time. I would like you to start, first, with the news and wire services. Tell us whether anything of that nature would be available to someone desiring to start a morning paper in New Orleans?

Mr. Kramer: Objection, Your Honor. There is no testimony nor any claim on this point by the Government. At least, I don't recall we have introduced any testimony on it.

Mr. Phelps: If the Court please, it may be an excess of caution. The Government has introduced a substantial number of contracts, including a substantial amount of correspondence, indicating that certain features were held available for the Times-Picayune Publishing Company. If the Government is willing to stipulate the effect of the testimony that we propose to elicit from Mr. Healy we certainly won't proceed to examine him further.

If the Government will stipulate that so far as the record shows there are adequate editorial facilities available to The Item Company or to any other person desiring to start a morning newspaper, we will withdraw this witness from the stand.

Mr. Kramer: I can't stipulate it because I don't know it. It is just that we have never made any such claim. I suppose I have just said enough to wipe me out, Your Honor.

The Court: I have in mind the questions asked the paper people with respect to the availability of the newsprint: [fol. 1729] whether the newsprint is available for a newspaper, or whether the supply and demand are in balance, as I think someone testified. Didn't that have to do with the possibility of someone commencing another newspaper?

Mr. Kramer: Yes, Your Honor; it did.

The Court: The objection is overruled.

Mr. Phelps: Would you repeat the question, please, Mr. Hickman?

(The Reporter read the last question.)

A. It is my opinion that adequate wire services would be available to someone who desired to start a morning newspaper in New Orleans. As I understand the decision in the Associated Press case, the Associated Press Service would be available. I believe that the United Press Service would be available, and I know of a great many supplementary wire services, such as the New York Times Service, the New York Herald-Tribune Service, and a great many others which would be available to anyone who desired to obtain them.

Q. What about the recruiting of a staff for local reporting? I see we have quite a substantial number of them in the Courtroom. Would you say there are others available who might do editorial work for someone starting a newspaper here?

A. Yes, sir. I don't think that there is any shortage of potential newspapermen.

Q. How about any wire services, or press services that might be available?

A. I think I answered that question. The A. P. would be [fol. 1730] available, the U. P. would be available, and a great many supplementary services.

Q. Are there any foreign services?

A. Yes, sir. Anita, would be available; Reuters would be available, and Overseas News Service would be available. A great many others along the same line.

Q. Would there be any difficulty in obtaining science services, religious news service, or international labor news services?

A. No, sir. They all are available.

Q. What about photographic services? Would they be available?

A. There are a number of photographic services that are at this moment available in New Orleans. Underwood & Underwood; World Wide Photos, and a great many other established organizations of that kind.

Q. What about feature syndicates? Are there any feature syndicates that would be available for use in New Orleans?

A. A great many. There are approximately 170 newspaper feature syndicates, of which I believe that at the moment less than 30 per cent are tied up in New Orleans. I would say that of the Comic Subject market there are approximately 270 comic subjects, of which about 65 are now being used regularly in this City. Of the columns, there are approximately 400 columns of which about 32 are now being used regularly in New Orleans.

Q. What about cartoonists, or services by cartoonists?

[fol. 1731] A. There are 35 editorial cartoons available through syndicates, and I think that only one is now being used in New Orleans.

Q. What about entertainment features, such as puzzles and games?

A. There are an abundance of such features on the market and open in this City.

Q. In your considered opinion, can you tell this Court whether or not there are adequate editorial facilities in every respect with which The Item Company, or any other person or company, could start a morning paper in the City of New Orleans?

A. There is no doubt in my mind but what there are adequate editorial facilities available to anyone who should care to use them.

Mr. Wilson: You may cross examine, Mr. Kramer.
Mr. Kramer: No cross examination.
Mr. Phelps: Thank you, Mr. Healy.

(Witness excused.)

Mr. Phelps: My next witness is Mr. Roland Ladreyt, who has also testified before.

[fol. 1732] Roland Ladreyt, a witness called by and on behalf of the defendants, being previously sworn, was examined and testified further as follows:

Direct examination.

By Mr. Phelps:

Q. Are you the same Mr. Ladreyt who has testified earlier in this case?

A. Yes, I am.

Q. Mr. Ladreyt, would you tell us how many lines make a full page R.O.P.?

A. Twenty-four hundred (2,400).

Q. Would you explain the meaning of the term R.O.P.?

A. R.O.P. means a run of paper and applies to that part of the paper as separate from the comic section or the supplements like This Week or American Weekly or the Times-Picayune States' Rotogravure Magazine, Dixie.

Q. How many lines make a full page in the American Weekly?

A. A thousand.

Q. How many lines make a full page in This Week magazine?

A. Eight hundred fifty.

Q. Mr. Ladreyt, are you familiar with the Siroil account concerning which Mr. Marcuse testified?

A. Yes, I am.

Q. Do you know the date of expiration of the Siroil contract during the year 1950?

[fol. 1733] A. On April thirtieth.

Mr. Kramer: Contract with whom?

Mr. Phelps: Siroil contract with the Times-Picayune Publishing Company.

By Mr. Phelps:

Q. What is your answer?

A. April 30, 1950.

Q. Do you know when Siroil commenced to using the Times-Picayune States in combination in 1950?

A. I couldn't answer the exact date in 1950, no, sir.

Q. Do you know whether it was before or after April 30, 1950?

A. I assume it was after April 30.

Q. Would you check your records, if you have any?

A. I have no records to show the exact date in 1950. I have records to show that during 1950 the Siroil account used 1406 lines in the morning edition and 1256 lines in the evening edition.

Q. Do you know whether the Item Company had any rate change in general advertising during the year 1950?

A. In November, 1950, they announced a rate increase effective January 1, 1951.

Q. Do you have any way that you can verify that rate increase?

A. Yes, I can obtain the announced rate cards of the Item Company.

Mr. Kramer: Of what Company?

A. The rate cards, published rate cards, announcing the [fol. 1734] rate increase.

The Court: The Item Company.

A. We are talking about the Item increase in 1950.

By Mr. Phelps:

Q. Would you reconsider that answer, Mr. Ladreyt, as to whether or not that increase didn't take effect during the year 1950?

A. The increase was effective in November, 1950, for all accounts without contract, and they allowed the usual sixty day notice—I say usual—I mean that is printed in practically all rate cards. They took advantage of the sixty day cancellation clause and all contracts were supposed to be cancelled on January 1, 1951.

Q. Let me see if I understand your answer. Do you mean that as to existing contracts, the rate became effective on January 1, 1951?

A. That is my understanding, yes.

Q. As to advertisers who had no former contract or had new contracts, when did the rate increase become effective?

A. My understanding is that it was effective right away, in November, November, 1950.

Q. What time in November was it effective?

A. I am not clear on that.

Q. Mr. Ladreyt, with reference to the question of how Media Records classified the general advertising in the Item's week end edition, the records shows that generally speaking, that was classified with Sunday lineage. Do you know whether that rule was true as to the weekend, the two weekend editions in December of 1950?

[fol. 1735] A. Yes.

Mr. Kramer: Just a minute. Rather than having it read back, may I inquire of counsel what the question was. You mean classified by Media Records?

Mr. Phelps: You cast some doubt on the question of whether Media Records had included the two weekend editions of December, 1950, with the six day December, 1950 lineage, or with the Sunday, December, '50 lineage.

Mr. Kramer: If the Court please, that is correct. I did cast doubt not intending to, and I quite agree it is classified in Media Records as Sunday for the last two editions, December, 1950.

Mr. Phelps: I withdraw the question.

[fol. 1736] Q. Mr. Ladreyt, based on the information which Mr. Kramer has furnished for the record, I would be correct in saying that there were two Saturdays in December of 1950 where the Item printed or published a combination Saturday-Sunday paper.

Does that agree with your information?

A. Yes. There were two Saturdays. The paper carried the Sunday date line, but printed on Saturday for the morning and there was no regular Saturday afternoon paper.

Q. Did you check the general advertising lineage carried by The Item Company during the corresponding two Saturdays for the year 1949?

A. Yes, I did.

Q. How many lines of general advertising did The Item Company carry during the last two Saturdays of December, 1949, approximately?

A. Approximately 5,000 lines.

The Court: Each?

A. No, for the two.

By Mr. Phelps:

Q. Mr. Ladreyt, to keep the record straight, will you explain once more the meaning of the term "milline rate"?

A. The meaning of the term "milline rate" is the cost of agate line printed a million times.

Q. What is the milline rate for the Times-Picayune-States on general advertising six days?

A. I am going from memory. I think it starts at $2.14 and goes down to $1.95 or 1.96, something like that.

[fol. 1737] Q. What is the corresponding milline rate for the six-day Item?

A. The six-day Item is—I am not certain about the open rate, but I think it is about $2.95 and has a milline of $2.58.

Q. Mr. Ladreyt, have you prepared a partial list of accounts of general advertisers using the Sunday Item in 1950 who, in your opinion, would have used the six-day Item in 1950 had they not been in the Sunday Item in 1950?

A. I have made a memorandum check of those accounts which I thought would be published in the weekday Item if they had no Sunday Item, yes.

Q. Would you list those accounts, referring to any memorandum that you have.

Mr. Kramer: Objection, Your Honor. How can he possibly tell who would have advertised in the Item but for something else.

When we produced Mr. Leeming to testify as to a similar matter with respect to the automotive and financial accounts of the Times-Picayune and States, I thought, quite properly, that Mr. Phelps objected on the ground that he couldn't possibly tell sufficient to make an estimate as to how the Times-Picayune and States conduct their business.

Similarly, here: How could Mr. Ladreyt know what

would have happened if something else hadn't happened to the Item?

Mr. Phelps: Irrespective of Mr. Leeming's abilities, I believe Mr. Ladreyt is able to answer the question, and I am perfectly willing to submit his ability in that regard to [fol. 1738] cross examination by counsel for whatever his testimony in this regard is worth. I think it has value.

The Court: Let me go back to the Picayune-States testimony, at least the testimony of Mr. Leeming with respect to the Picayune and States. I don't remember it very well.

What was the point?

Mr. Kramer: The first time Mr. Leeming appeared on the stand, he submitted a list called G-125, in which he attempted to state the number of lines of automotive and financial advertising carried by the Times-Picayune and States that should be included in retail display, rather than as general display and counsel, I thought, at that time made a rather effective and powerful argument that he couldn't possibly know.

The Court: That is true, because he had to rely upon the records of the Times-Picayune which had not been available to him.

Mr. Kramer: Now, how can this man tell what an advertiser would have done if something else hadn't happened.

The Court: We will see what the basis of his figures are. If they are based on what happened in the previous year when there was no Sunday paper, it seems to me there might be a basis for it.

This is based now on the Item's records?

A. Yes. It is based on such things as the Item publishes a special section on a Sunday in 1950. They could have published that Sunday on a Wednesday or Thursday or Friday or any other day and still obtained the business that they got for it. I am not dealing entirely with special sections, however, but that is an example.

The Court: It is also based on ads which appeared in the [fol. 1739] Sunday Magazine after the Sunday paper commenced which had appeared in the daily paper prior to the time there was a Sunday edition.

A. I am talking about accounts which have previously

used the Item on weekdays and which have used the Item in 1950 to a great extent on Sundays. I mean: It is a reasonable assumption that we are going to get the business.

The Court: Just a minute. Do you understand the situation?

Mr. Kramer: I am not sure that I do. If I do, I certainly object to it.

The Court: I thought maybe if you understood it, you would not object. That is why I asked you if you understood it.

As I understand it, the advertising accounts which appeared on weekdays in 1949 when there was no Sunday paper have been analyzed in 1950 when there was a Sunday paper. As I understand it, he is going to testify that many of those advertisers who advertised in the weekday paper in the first period were later advertising in the Sunday paper.

Mr. Kramer: I think I have grasped the point, Your Honor.

The Court: Is your objection withdrawn?

Mr. Kramer: At the moment. Certainly, the objection is withdrawn for the time being.

The Court: Lay the foundation.

By Mr. Phelps:

Q. Mr. Ladreyt, based on you familiarity with general [fol. 1740] advertising, are you in position to say that certain accounts which ran in the Sunday Item in 1950 would in all probability have run in the six-day Item in 1950 had there been no Sunday Item in 1950?

A. I have a list which I prepared covering accounts that, in my opinion, would have used the six-day Item, regardless of the Sunday.

Q. What reasons would you have for feeling that you could make that distinction?

A. I think there is general knowledge of the performance of the accounts in previous years.

Q. Well, suppose you give us the list of accounts that you feel would have run in the six-day Item in 1950, had there been no Sunday Item?

The Court: Weekday Item? Because it is still the six-day Item.

Mr. Phelps: Basically in 1950, it was six days and Sunday, with the exception of two weekends.

The Court: That is right.

A. Do you want the lineage and the name of the account?

By Mr. Phelps:

Q. The name of the account and the lineage.

A. Holsum Bread, 2132 lines.

Q. The lineage figures you are reading are what? The lineage run in what?

A. Lineage as appeared in the Sunday Item from Media Records.

Q. In 1950?

A. Yes.

[fol. 1741] Q. All right.

A. Coca Cola, 1612 lines; Johnson's Wax Products, 3192. I have taken hotels and resorts as a classification, 13,046 lines; Youngstown Kitchen Aider, 2107 lines; Youngstown Kitchens, 1215 lines; the Waste King Pulverator, 1514 lines; William Hellns, 2400 lines; Hadacol, 26,531 lines; Political, miscellaneous, 2313 lines; Petroleum Week Section, 3740 lines. Excuse me a minute. I will explain that Petroleum Week Section doesn't mean that is all the lines that appeared in that section, but that is the Media Records definition of a group of accounts.

Jules Messner, Inc., 1,005 lines; New Orleans Public Service, 2380 lines; the Unicorn Press, 1904 lines; Admiral Television, 1,000 lines; DuMont Television, 1,005 lines; Emerson Television 3,000 lines; General Electric Television, 1750 lines; Motorola Television, 7958 lines; Philco Television, 2400 lines; Westinghouse Television, 1,085 lines; Chicago & Southern Air Lines, 830 lines; National Air Lines, 2742 lines; Continental Trailways, 981 lines; Trailways, 675 lines; Chicago-Burlington and Quincy Railway, 1414 lines; Kansas City Southern Railway, 4814 lines; Louisville & Nashville Railroad, 2181 lines; United Fruit Company, 1469 lines.

The entire classification of oil and gasoline in Media Records is general; and on Sunday, they had 17,431 lines.

I am now going into the automotive classification. The Cadillac car, 840 lines; Chevrolet, 4129 lines; Chrysler Institutional Advertising, 7200 lines; Ford, 4690 lines, Hudson, 3300 lines; Oldsmobile, 2240 lines; Plymouth, 8,022 lines; Pontiac, 840 lines; Renault, 675 lines; Chevrolet [fol. 1742] Truck, 1140 lines; Ford Truck, 1,000 lines.

I am now going into financial and the classification, "Banks and Trust Companies," which is 2750 lines; Stock and Bond Houses, 2105 lines, or a total of 157,856 lines as representing a partial number of lines which I consider appeared in the Sunday Item and which, in my opinion, would have been carried in the weekday Item.

Q. You say, "partial". Do you mean that that is a complete or is not a complete list?

A. That is not a complete list.

Q. When you refer to the lineage in the Sunday Item, do you include the American Weekly?

A. Not in this particular case, I did not.

Q. In other words, the lineage advertising referred to do not include lineage appearing in the American Weekly?

A. These were all r.o.p., except in one case. The Unicorn Press was a page in the Comic Section and I considered that because we have carried Unicorn Press advertising, r.o.p., on occasions, and we carried it in our Comic Section and I think we have also had it in our Dixie Magazine.

[fol. 1743] Mr. Phelps: You may cross-examine, Mr. Kramer.

Cross-examination.

By Mr. Kramer:

Q. Mr. Ladreyt, you were asked on direct examination by your counsel whether or not you had made an advertising lineage study relative to certain advertising that appeared in the Item. Is that right?

A. Are you referring to this Sunday list?

Q. Whatever this list was that you were just reading from.

A. Yes.

Q. Now let me see if I understand you: is that a list of

advertisers who advertised in 1949 in the daily Item who advertised in 1950 in the Sunday Item?

A. I wouldn't testify it was a hundred per cent so, but most of them were.

Q. I hand you Government Exhibit 34 which was testified to by you when you were last on the stand, the general rate card of The Times-Picayune Publishing Company issued December 1, 1949, in effect February 1, 1950, and I ask you, either by your independent knowledge or by referring to that exhibit, whether or not The Times-Picayune Publishing Company had in effect at that time the unit rate for general advertising for its morning and evening papers or editions, as you call them?

Mr. Phelps: If the Court please, I want to object to that question. I see no reason to lengthen the examination of this witness by going into a lot of matters that were not brought out in connection with his direct examination. I am going to ask the Court, in order to save time in the ex-
[fol. 1744] amination, to restrict the cross-examination to matters covered in direct.

Mr. Kramer: I assure you, it will be so restricted, Your Honor, if I may lay a foundation.

The Court: Proceed.

By Mr. Kramer:

Q. Did you understand the question? In 1950, did you have a unit rate on morning and evening for general advertisers?

A. Yes.

Q. Did you have such a rate in 1949, a unit rate?

A. Yes—not—we had an optional rate.

Q. Well, did you have—if I may use the term—a forced combination rate in 1949?

A. No.

Q. Did you have a forced combinated rate in 1950 commencing February first?

A. According to this rate card, we had a single unit rate for morning and evening papers.

Q. And that wasn't optional, was it?

A. No.

Q. Now, look at that rate card, and tell me whether or not you had a forced or compulsory unit rate for advertising in the Sunday paper published by The Times-Picayune Publishing Company?

Mr. Phelps: If the Court please, I still fail to see the relevancy of this line of examination. I very much appreci- [fol. 1745] ated counsel's position, but it seems to me it is going over something that was covered in the Government's case but not on direct examination.

Mr. Kramer: Your Honor, I am leading up to a question.

Mr. Phelps: Would you tell us the line——

Mr. Kramer: I would rather not.

The Court: Proceed.

Mr. Wilson: Might I tell the Court there could only be a unit rate for Sunday because the Times-Picayune and the States are published in the same newspaper on Sunday.

By Mr. Kramer:

Q. Did you, in 1950, require advertisers who purchased space, general advertisers who purchased space in your morning and afternoon editions also to purchase space in your Sunday edition, as you call it?

A. No.

Q. Now, Mr. Ladreyt, I will ask you this question: in your opinion, as the Manager of General Advertising for The Times-Picayune Publishing Company, isn't it possible that these accounts shifted from daily to Sunday Item because you had a unit rate and they had to take your afternoon paper if they wanted to take your morning paper, in 1950?

Mr. Phelps: If the Court please, that demonstrates the objection I made all along. The question is wholly irrelevant. If the advertisers wished to spend their money in the six day Item, they could just as easily spend it there as in the Sunday Item, and what the unit rate of The Times-Picayune Publishing Company may have had to do with [fol. 1746] how he spent his money in the Item escapes me entirely. I object to the question and move the whole line of questioning be stricken.

The Court: I will overrule the objection. Read the question back, please.

(Question read by reporter.)

The Court: I can see no connection at all. If an advertiser wants to spend X dollars for advertising in the Item, he can just as well spend it on the week days as Sunday, is that right?

A. Yes, Your Honor. I can see no reason why our unit rate should make them jump out of the week day Item to the Sunday Item. I see no reason——

By Mr. Kramer:

Q. Mr. Ladreyt, look at that list which you read into the record recently. Can you tell from any records you now have which of the advertisers that you read off advertised in the Times-Picayune morning in 1949?

Mr. Phelps: If the Court please, I see no relevancy to that question either. We can be here all afternoon if counsel wants to go beyond the scope of original examination.

The Court: I suppose we shall be here all afternoon anyway.

Mr. Phelps: I meant with this witness, Your Honor.

The Court: Let us hear the question.

(Question read by reporter.)

The Court: What is the purpose of that question?

[fol. 1747] Mr. Kramer: If Your Honor please, I am about to ascertain whether precisely what I suggested to the witness did not, in fact, happen.

The Court: You said they did not advertise in the Times-Picayune in 1949, I understand.

Mr. Kramer: That is right. I am going to show, after we get their lineage in the Times-Picayune in respect to each one in 1949, we are going to get the lineage in the Item and then compare that with 1950.

The Court: Is it a question whether they advertised in the Item in 1949? You are not going to attempt to show

that is why they moved out of the Item into the Times-Picayune, are you?

Mr. Kramer: The purpose of this examination is to demonstrate, account by account, which of those the witness listed advertised in 1949 in the Times-Picayune and Item morning and evening, and in 1950, morning and evening, advertised in the Times-Picayune and States, and used the Item for their Sunday advertising.

The Court: And not the Times-Picayune?

Mr. Kramer: I don't know what they did on Sunday with respect to the Times-Picayune, nor do I see the relevancy of it, although we are perfectly willing to bring that out.

The Court: Go ahead.

Mr. Kramer: I would like to suggest this to Your Honor, that is, if Your Honor prefers, we take these figures ourselves and work them out and then put a witness on rebuttal.

[fol. 1748] The Court: Do as you like.

Mr. Kramer: May I talk to my associates? My associates agree with me that the quicker, more expeditious way to get off these lineage figures would be to do it on rebuttal.

By Mr. Kramer:

Q. Will you state, please, the basis you used in forming your judgment as to the list of advertisers and the lineage they used that you read on direct examination.

A. I think this represents a list of advertisers who would have used the week day Item for the amount of lineage which I called off regardless of the Sunday paper. The first one I called off was Holsum Bread, 2132 lines: Holsum Bread uses the week day Item as well as the Sunday, and this ad appeared in the Sunday Item, because I think they had a special section, and I think if they had had a week day special section, they would have used the week day——

Q. Just explain the basis on which you arrived at your opinion.

Mr. Phelps: I think that is what the witness is trying to do.

A. Well, if the Item elects to carry a special section on Sunday instead of a week day, the advertising will go there

on Sunday. Otherwise, it would be just as well to have appeared on the week day.

We solicit advertising for Oil Progress week section, or any section, whether it is a Mardi Gras section or anything else, we solicit it for that section, and advertisers buy space in that section.

[fol. 1749] Then they ask you what date you are going to run it. That is the newspaper's prerogative, more or less, when they are going to run it, if it isn't too far removed from the date of event.

Q. You say it is the newspaper's prerogative to run a newspaper on Sunday or daily?

A. No, I did not say that. I said to run a special section.

Q. Sundays or week days?

A. If you are selling space in a section, you sell it in the section for the particular event.

Q. Other than such advertising, the advertiser specifies daily or Sunday, doesn't he?

A. Well, you can sell him sometimes on Sunday or daily too.

Q. But he does specify whether he wants it on daily or Sunday, doesn't he—the advertiser?

A. He has the last word on it, yes.

Q. Now, did I understand you to say that you did not check all these accounts to see whether they actually used the daily Item in 1949?

A. I wouldn't testify to that effect. My opinion is that they did.

Q. Your opinion is that these accounts used the daily Item in 1949?

A. Yes.

Q. Couldn't you have checked the Media Records and found out so there wouldn't be any opinion about it?

[fol. 1750] A. I am not offering this as a bona fide list of accounts. I am offering this as a partial list. I think the list would be much greater if it were checked, account for account.

Q. But what was the basis for the information that these people did use the Item in 1949?

Mr. Phelps: If the Court please, I don't see where it makes any difference whether they used the Item in 1949

or not. The question is whether they would have used the six day Item.

The Court: He is expressing an opinion. I think he has the right to show the basis of his opinion. Then it can be determined how much weight should be attached to his opinion.

A. This list was made up on the basis that these accounts would have used the week day Item had they not had a Sunday edition.

The Court: Do you know that from your experience as a newspaper man?

A. Yes, sir.

The Court: How do you know that? From the past experience you have had?

A. I know that from past experience, and I know that the Coca Cola Company, which uses all papers daily and have a special ad in the Item Sunday, they would have used that ad in the Item on the week day if it was in connection with any special edition.

Hotels and restaurants and resorts advertise whenever they have got a special edition in the Sunday paper. The Youngstown Kitchen Equipment people run daily advertising——

[fol. 1751] The Court: After they commenced the Sunday edition, was that hotel advertising taken out of the week day paper and placed in the Sunday?

A. Well, they devoted more selling effort to the resort page on Sunday.

The Court: All right. Proceed.

[fol. 1752] By Mr. Kramer:

Q. When you say they devoted more effort to it, do you mean The Item Company?

A. Yes. They elected to promote resort advertising on Sunday over the week day.

Q. You, of course, don't know the reason for that, do you?

A. No, I surely don't. But I am just expressing an opinion that they could have sold it weekday if they didn't have a Sunday paper.

Q. Now, this is in 1950?

A. That is right.

Q. With all these accounts, concerning which you read figures about, accounts which had you carried them would have carried the General Advertising rate card rates, or would some of them have been Local Display rates? Retail Display rates, as you call them.

A. These are a hundred per cent General.

Q. A hundred per cent General?

A. Yes.

Q. And you are quite sure about that?

A. Yes.

Q. Look at that exhibit, "G-34." Tell me what classification on it covers hotels and resorts. Is that amusements.

A. No. Hotels and resorts are General.

Q. Yes. Will you show me on "G-34" what rate hotels and resorts would carry?

A. I am speaking of hotels and resorts; not New Orleans hotels.

[fol. 1753] Q. I see. Resorts and hotels outside of New Orleans?

A. Right.

Q. It would come under "1", wouldn't it?

A. Under this 1; yes.

Q. Mr. Ladreyt, do you feel that you have given the entire basis upon which you expressed your opinions in your direct and your cross examination here, or is there anything else that you can add as the basis for the opinions which you have expressed?

Mr. Phelps: In what connection?

Mr. Kramer: In connection with the list of advertising accounts which he read off.

A. No, I don't think I can elaborate any further.

Mr. Kramer: Nothing further, Mr. Ladreyt.

Mr. Phelps: That is all, Mr. Ladreyt.

(Witness excused.)

T. J. ADAMS, a witness called by and on behalf of the defendants, having previously been sworn, was examined and testified as follows:

Direct examination.

By Mr. Phelps:

Q. Are you the same Mr. Adams who has already testified in connection with this lawsuit?

A. I am.

Q. Mr. Adams, are you familiar with the manner in which [fol. 1754] The Times-Picayune Publishing Company handled Classified Advertising from 1933, after the purchase of the States, until the time in 1935 when they instituted a unit rate for classified advertising?

A. I am.

Q. Would you tell the Court whether that method of handling Classified Advertising prior to the unit rate was, in your opinion, more efficient or less efficient than the method of handling it thereafter?

A. It was less efficient prior to the March, 1935, adoption of the unit plan, for many reasons.

Q. Would you state some of the reasons? Probably if you start with Solicitation of Advertising, that would be as good a starting point as any.

A. That would be the very start in the ad takers, or the solicitation of the advertising, and the question of whether it would be published morning or evening, how that order would be written up, how many copies of it, or extra orders to be made, and to route it in the proper system at your office.

Then the next step would be through the Credit Department, and the files that are maintained in that department for the advance date ad. You would add to the complication there considerably. You would also add to the complication of the mechanical department. That, I recall, we had considerable trouble with, in that we had to maintain two separate galleys and two separate pages of type for each one of the editions of the paper. Then the copy would have to be divided again in the proof room, and checked twice each day in the Credit Department that is

[fol. 1755] assigned to that work. You would have two marked files; would have two insert books, and several others that I don't recall at the moment.

Q. What about in computation of rates? Would you have any difference in the method of computing rates before and after the unit rate went in?

A. We did have quite a bit of complication in the rates from '33 to '35, primarily because the rate structure approved by the management led into and out of the Sunday, for the morning edition, and the evening edition. It was quite a complicated affair, and I recall that even our rate clerks, who were experts on that, had trouble with it; and, of course, the general public had considerable trouble with it: the advertisers, I should say.

Q. Did you find any difference in the public relations of the company with respect to Classified Advertising before and after the unit rate went into effect?

A. The public relations in the Classified Advertising from the contacts and sales, since we were very close to it, was much better after we adopted the unit rate. For one thing, due to the multiplicity of rates of the morning edition, the evening edition, and the Sunday edition.

Q. Did you find any difference with respect to errors in the composing room?

A. May I explain that the errors in the composing room were many because of the plan to try to get the ad either in the morning or the evening edition, and in using that bank of type that was of constant vigilance throughout the day [fol. 1756] to try to get it not only, say, in the afternoon edition, but to get it under the right classification; because, as Mr. Tims testified, we have as many classifications as you have lights in the Cathedral.

Q. When you talk of this confusion, are you talking about before or after the unit rate?

A. This was prior to the adoption of the unit plan.

Q. Did you notice any change when the unit rate went in?

A. Oh, *yes, sir.* It simplified it. We have one file, one bank, one form, and it goes through very efficiently. It is a very simple rate.

Q. In your opinion, Mr. Adams, did the change in Classified to selling in the unit combination result in poorer or in better service to the advertiser?

A. It was better service to the advertiser. It gave him an opportunity of a twenty-four hour coverage. It gave him a greater service in the distribution of his message to our readers.

Q. In your opinion, Mr. Adams, did the change-over result in any savings to the advertiser insofar as his cost of advertising was concerned?

Mr. Kramer: Objection, Your Honor. There has been no foundation laid that this man is competent to give an opinion on that.

Mr. Phelps: I think that the record speaks for itself in that regard, if the Court please.

[fol. 1757] Mr. Kramer: He is asking for his opinion as to whether or not it gave him a lower rate or not.

Mr. Phelps: I am perfectly willing to qualify him. I think the record shows he has been handling Classified Advertising for an awfully long time.

Mr. Kramer: The question, if Your Honor please, would you have had to charge more. I suppose if he knows he can answer that. It is the way the question is framed that I object to.

Mr. Phelps: I am perfectly willing to rephrase it.

By Mr. Phelps:

Q. Mr. Adams, in your opinion, if Classified Advertising were sold separately today rather than as a unit, would it result in greater or less cost to the advertiser?

A. It would result in greater cost to the advertiser if it were sold separately. There is a definite advantage of having it under a unit rate plan, that you can have a single operation to render a twenty-four hour service for your advertisers distributing their message to the readers. It is quite evident.

Mr. Phelps: If the Court please, I would like to have the witness identify Exhibit "D-2", which we don't have. It is annexed to the original answer. Would you let me have the Answer please? (Document handed to counsel.) I think Government counsel received a copy of it when the Answer was served on them.

By Mr. Phelps:

Q. Mr. Adams, I show you a document referred to as [fol. 1758] Exhibit "D-2" and ask you what that is.

A. "Local Display Rates of the Morning Tribune-New Orleans Item, the Sunday Item-Tribune, Effective April, 1928, Yearly Space Contract."

Mr. Phelps: We offer Exhibit "D-2" in evidence.

Mr. Kramer: If it is annexed to the answer, I——

The Court: It will be admitted.

(The document referred to was marked Defendants' Exhibit 2 for identification and received in evidence.)

By Mr. Phelps:

Q. Mr. Adams, about how many transactions are handled daily by the Times-Picayune Publishing Company in connection with Classified Advertising?

A. I believe this would be the answer: About 2300 classified ads, daily, six days a week.

Q. What about on Sunday.

A. Approximately 5,000, or more. On Sunday you will have from 2,000 to 2500 new ads. The others are carried over on multiple insertions. On week days it varies between 500 to 900 new ads per day. But all of the 2300 daily and over 5,000 Sunday have to be checked in routine in the office to render that service, which is a matter of repetition.

Mr. Phelps: Will you answer Mr. Kramer's questions, please?

[fol. 1759] Cross examination.

By Mr. Kramer:

Q. You testified on direct examination, if I understood you correctly, Mr. Adams, that previous to the adoption of the unit rate there was a multiplicity of rates. Do you remember that? Do you remember so testifying?

A. Yes, sir.

Q. Now, that multiplicity of rates you testified about had to do only with Classified, didn't it?

A. I was testifying on Classified advertising; yes, sir.

Q. You were not speaking about any multiplicity of rates in classifications of advertising other than Classified?

A. No, sir. Classified: agate classified advertising.

Q. All right. Now, you were asked your opinion as to whether or not the unit rate resulted in savings in cost to the advertiser. Do you remember that?

A. Yes, sir.

Q. And do you remember you were asked about whether or not the unit rate permitted a more efficient handling of Classified advertising?

Do you remember that?

A. Yes, sir.

Q. Now, were you or weren't you intending to testify, or did you testify that those were the reasons for adopting the unit rate?

Mr. Phelps: If the Court please, we did not ask the witness about that: merely about the effects of it before and [fol. 1760] after. He was asked about the reasons before when Mr. Kramer had him on the stand in connection with the Government's case, but there were no questions asked about that on direct examination.

Mr. Kramer: I wanted to make it clear whether or not I presume we should ask the witness whether or not this was the reason for adopting it or whether this was his opinion of it after it was adopted.

The Court: He can answer.

A. I was explaining what happened prior to the adoption and what occurred after the adoption. I am not advancing that as any theory of the decision made by management.

The Court: You did not participate in the conferences. That is my recollection.

A. Only so far as the accounting is concerned, Your Honor; and the handling of the distribution of the rates that the management had already adopted.

The Court: That was my recollection.

Mr. Kramer: That was my recollection. I just wanted to make certain.

No further questions.

Mr. Phelps: That is all, Mr. Adams. Thank you.

(Witness excused.)

[fol. 1761] DONALD W. COLEMAN, a witness called by and on behalf of the defendants, being first sworn, was examined and testified as follows:

Direct examination.

By Mr. Wilson:

Q. Will you state your name, please?
A. Donald Coleman.
Q. Where do you live, Mr. Coleman?
A. 301 Fredericks Avenue, Metairie.
Q. What is your occupation?
A. Circulation Manager of The Times-Picayune Publishing Company.
Q. How long have you been employed by The Times-Picayune Publishing Company?
A. Since 1914, with the exception of about three and a half years.
Q. Would you just tell the Court the various positions you have held with the Company?
A. I started off as an office boy. I was telephone operator; I have worked on the Sports department; I have worked on the front counter; been in charge of what we call the "Morgue" over at the paper. I have worked in Classified Advertising; I have worked in Display Advertising. I was the Classified Manager for six years. I was the Advertising Manager of the States for a year and a half. I have been Circulation Manager for the last fifteen years.
[fol. 1762] Q. Are you an officer of the Company?
A. I am at present Fifth Vice President.
Q. Are you also a Director of the Company?
A. No, sir.
Q. How long have you been the Fifth Vice President?
A. About three years.
Q. You are a defendant in this lawsuit, are you not, Mr. Coleman?
A. Yes, sir.
Q. Mr. Coleman, in your work for The Times-Picayune Publishing Company, as the head of the Circulation De-

partment, just exactly what do you do? What is the job that you perform as Circulation Manager?

A. Well, we have thirteen editions, and those papers have to be sold, delivered and then collected for. They have to be promoted, and that is my overall responsibility. In addition to that I have to do my share of maintaining good will with the public.

Q. Do you handle all forms of circulation? Or is that under your direction, whether it is carrier, home delivery, or street sales or over-the-counter sales, or all the various kinds?

A. That is correct.

Q. Just tell me how many different methods you have of handling circulation.

A. Well, there is street sales; there is mail circulation; there is carrier circulation; there is dealer circulation; [fol. 1763] there is country circulation, which is divided into dealers, street sales and carriers. There are counter sales.

Q. You said you handled it for all thirteen editions. Does that mean thirteen editions a day, week, or what?

A. I mean thirteen editions of the week.

Q. Well now, do you have various press runs on each edition?

A. That is correct.

Q. How many do you have in connection with your morning edition?

A. Four. Five, actually.

Q. And how many do you have in connection with the evening edition?

A. Six, I believe.

Q. Explain to the Court exactly how your street sales are handled. Do you have employees there that take the papers and distribute them around to the corners, or how do you handle that?

A. We have a street salesman on the Times-Picayune and States whose overall responsibility is to see that the papers are shipped out at the platform and to check corners. He, in turn, deals directly with wholesalers on both the Times-Picayune and States.

Q. Are these wholesalers people who are employed by the Company?

A. No, sir; they are independent contractors.

Q. And how are they paid?

A. They are not paid. They buy papers from us at [fol. 1764] wholesale and their earnings, or the money they make, is the difference in what they pay us and what they sell the newspapers to the newsboys for, who, in turn, pay the wholesalers, and he makes his profit from the public.

Q. Is that the way you handle all thirteen editions each week?

A. That is right.

Q. Mr. Coleman, do these wholesalers who deal with The Times-Picayune Publishing Company, any of them, also have relations with any other newspaper by which they handle their newspapers?

A. No. They have a contract with The Times-Picayune Publishing Company and that, that alone. They don't handle any papers for any other Company in town.

The Court: Keep you voice up, Mr. Coleman.

A. They do not have any contract with any other newspaper in the City of New Orleans, other than that of The Times-Picayune Publishing Company.

By Mr. Wilson:

Q. How about outside the City of New Orleans?

A. That is also true. The contract that we have with the independent distributors are with The Times-Picayune Publishing Company alone, in towns wherever we have those contracts.

Q. How about with the New York Daily News?

A. The New York Daily News was handled by the employees, I believe, of the Item. They call their wholesalers—they have employees as wholesalers, or, they did have. Their wholesalers were actually on the payroll of the Item; and they handled the New York News for about nine [fol. 1765] years.

Q. And then was there some change made in that arrangement?

A. Yes, sir. There was a change made in December of 1949.

Q. And what new arrangement replaced the arrangement which you have just described?

A. The States carriers were permitted to distribute the New York Daily News into the homes of the people of the City of New Orleans. The States' wholesalers were permitted to handle the New York News, and to distribute to their newsboys, the newsboys working for them, and the Times-Picayune wholesalers were permitted to do the same with Times-Picayune newsboys.

Q. As I understand it, they commenced handling—that is, these wholesalers and newsboys started handling the New York Daily News sometime in December, 1949. Is that right?

A. Yes, sir.

Q. Now, Mr. Coleman, after these boys took over handling it,—I am speaking specifically of the boys handling the street sales—did you have any difficulties with respect to newspaper distribution here, on your street sales after they had taken over the handling of the New York Daily News?

A. Yes, sir.

Q. Just what were those difficulties?

A. Wholesalers from the States reported that the Item wholesalers had told them that they could not handle the New York Daily News. In some cases——

[fol. 1766] Mr. Kramer: Objection, Your Honor.

They can bring these wholesalers in if they wish to testify as to what the wholesalers were told by the newsboys.

Mr. Wilson: Well, wait a minute, Mr. Kramer. This does not go to the truth of that, but to establish what the difficulties were that arose here in the handling of these papers, and as a preliminary to showing what Mr. Coleman did and why he acted in the way he did. It is not to establish the truth of the fact.

Mr. Kramer: If it is not to establish the truth of the fact, I withdraw the objection.

The Court: Very well.

By Mr. Wilson:

Q. Go right ahead, Mr. Coleman.

A. What is the question?

Q. I asked you just to explain to the Court what the dif-

ficulties were that arose after you undertook, or after the States' wholesalers and the Times-Picayune wholesalers and newsboys undertook to handle the New York Daily News. And you just told me that these people made some reports to you as to what the situation was on the street.

A. Well, first, there was a lawsuit in this town, with the Item Company suing the Louisiana News Company, who distributed the New York News in New Orleans, and adjacent territory. The Item suit, in the Civil District Court, was to restrain the Louisiana News Company from taking the New York News away—the privilege of distributing the New York News—away from the Item wholesalers and [fol. 1767] Item carriers. That suit was in court for about thirty days, down in the Civil District Court, in Judge Stich's court.

Either shortly before that or during the trial, or thereafter, the City Circulation Manager of the Item wrote a letter, which I have in my possession, in which he said that if anyone came around——

Mr. Kramer: Objection, Your Honor. He has the letter; let him produce it and see if it is admissible.

A. I will be glad to.

The Court: Do you have the letter to produce?

Mr. Wilson: I don't have it, but I can send for it.

A. I have it. May I leave the chair?

The Court: We will take a recess, while the witness gets the letter.

(Short recess.)

(Document obtained by witness.)

[fol. 1768] By Mr. Wilson:

Q. Mr. Coleman, just before the recess, you made reference to a letter. I hand you this letter and ask you if that is the letter to which you referred.

(Document handed to the witness.)

A. That is the letter, yes.

The Court: What is the date of the letter?

Mr. Wilson: The date of the letter is November 14, 1949.

By Mr. Wilson:

Q. Mr. Coleman, was that written to you?

A. No, sir.

Q. I notice it is addressed, "Dear Distributor" and signed by W. R. Tracey, Assistant Circulation Manager and is on the letterhead of the New Orleans Item.

How do you happen to be in possession of it?

A. One of our wholesalers gave it to me. Correction there. Either a wholesaler or distributing manager gave it to me.

Q. You don't know where he obtained it?

A. No.

Mr. Wilson: If the Court please, I offer the letter as Defendant's 21, I believe is the next number.

Mr. Phelps: You can use 17. That is a vacant number.

Mr. Wilson: Defendant's Exhibit 17.

The Court: It will be admitted.

(The document referred to was marked "D-17" for identification and was received in evidence.

[fol. 1769] Mr. Wilson: I will read the letter.

(Mr. Wilson read Defendant's Exhibit 17.)

By Mr. Wilson:

Q. Mr. Coleman, I believe at the time this matter came up, you made some reference to that letter.

Now, will you continue your testimony as to just what the difficulties were that you were having at that time or that arose in connection with the wholesalers and distributors of the—and the news boys of the States and the Item—I mean, the States and the Times-Picayune handling the New York Daily News?

A. Immediately after the lawsuit in the Civil District Court, the contract with the Item was expired or was canceled and the privilege of delivering the New York News into the homes was accorded the States' carriers and the privilege of handling the New York News on streets was given to the States' wholesalers and the Times-Picayune wholesalers.

We immediately started to distribute those New York News and we were told they couldn't put them on the Item box.

Q. You say, "We started to distribute them".

A. The wholesalers.

Q. Did you have anything to do with that?

A. I had nothing to do with that, not any of it, no, sir.

Q. All right.

A. The Item news vendors were told they could not put it on the Item box.

Mr. Kramer: Objection, Your Honor, unless he tells us [fol. 1770] how he knows what the Item people were told. If he is referring to something the Times-Picayune told him, I would like for him to say so, so I can follow his testimony.

By Mr. Wilson:

Q. Mr. Coleman, you say that they were told that they couldn't put them on——

The Court: I sustain the objection there.

Mr. Wilson: I was about to ask him a question, sir, that might clear it up.

The Court: All right.

By Mr. Wilson:

Q. Mr. Coleman, you were referring to the Item vendors. Were those the same people at that time that were handling the States, the same vendors that were handling the States?

A. Handled both the States and the Item.

Q. Now, did you directly talk with those people as to whether they could or could not put them on the Item box?

A. No.

Mr. Kramer: Did he say "no"?

Mr. Wilson: He said "no".

A. No.

By Mr. Wilson:

Q. Did you receive reports from anyone?

A. I tried to explain that. When the wholesaler went to

deliver the papers to the man who was selling States and [fol. 1771] Items, he was told by that man that the Item had told him that he couldn't handle it.

Mr. Kramer: Objection, Your Honor. Double hearsay.

The Court: It is in evidence, isn't it?

Mr. Wilson: Your own people testified to it.

The Court: I think it is in evidence. Am I mistaken about that?

Mr. Kramer: It is not my recollection, Your Honor.

The Court: I thought that someone testified here that——

Mr. Phelps: Your Honor's recollection is, I am quite sure, correct.

The Court: ——they told him they couldn't put the New York News on the Item box.

Mr. Kramer: I thought I objected to that, too, Your Honor.

Mr. Wilson: That was your own witness.

The Court: Proceed.

A. It so happens that that worked a hardship for the simple reason that in some cases there is only one box allowed in front of a particular building. For instance, there is the United Fruit Building. Some Government buildings won't allow but one box. If the Item has gotten there first with that box, that privilege, that means that the man sells the States and Items from that box. If the States has gotten there first, it means that the man sells States and Items from the States' box.

In that particular case, they took the New York News off that box and they had been on those boxes for eight or nine [fol. 1772] years, and that caused a hardship and was something which began to reckon with. It added to the very intense situation which had grown over a period of time due to competition.

By Mr. Wilson:

Q. Well now, you say, "due to competition".

Are you speaking now of this pushing of newspapers?

A. That is part of it, yes.

Q. What is the pushing of newspapers?

A. Pushing of newspapers from news boys is shoving one

paper in the background and pushing the other forward and making sales at the expense of the other fellow's sheet.

Q. Was it your belief at the time that this arose that the Item had been getting boys to push sales on the Item?

A. In order for me to answer that question, I have got to explain something to you.

As I said, this has gone on for years. There has been no disturbance in the city of New Orleans as far back as I can remember. There had been no disturbance on how the news boys handled the Item and the States. The attitude of both publishing houses seemed to be to give each paper an even break, just have a paper in each hand (indicating), shout "Item and States" or "States and Item", whichever the boy had been used to shouting.

In June, 1949, we noticed a change in that. It happened with a man by the name of Ogg, Jack Ogg, who started splitting corners at the corner of—The first place he started [fol. 1773] was Napoleon and Claiborne and Canal and the Cemeteries, because he wasn't satisfied with the amount of sales that the Item was getting out of that particular corner.

Q. Who was Jack Ogg?

A. He was a man in charge of street sales for the New Orleans Item.

They split that corner and that started some splitting for about two or three months. Then, the Item changed ownership and the stepup was noticeable. Then we saw the increased pressure was noticeable on the part of the New Orleans Item organization. Boxes were put out in front of the States. States' boxes were hidden. The Item was shouted and the States was not shouted. It was very apparent that the Item news boys were being influenced to push the Item and to put the States in the background.

Q. What steps did you take?

A. The steps to do the same thing, to retaliate.

Q. And by that, do you mean that you put your own people on corners?

A. I started splitting corners. I started getting out and checking corners. The Item had hired a detective agency to check the corners to see which papers were being pushed. I did the same thing, and found some very interesting stories.

Q. Well now, you say you started splitting corners. What do you mean by splitting a corner?

A. Both papers were formerly handled by one man; and, by splitting them, it would mean that we had two separate men, one handling the States and one handling the Item.

[fol. 1774] Q. And when you put a man on the corner to handle the States, was it understood with him that he would handle only the States?

A. That is right.

Q. And where Item corners had been split, was it necessary for you to get a new man on that corner, because the man handling it for the Item would not handle your papers?

A. He couldn't handle them.

Q. Well now, Mr. Coleman, how long did this go on?

A. It went on until sixty, ninety or one hundred twenty days—about ninety or one hundred twenty days after the Item published the Sunday paper.

Q. Now, did you have some difficulties at the time that the Item started putting out a Sunday paper?

A. Yes, sir.

Q. Well, tell us just what occurred at that time?

A. As a result of the lines being drawn, as formed, as I described to you a minute ago, I stopped the Times-Picayune street hustlers from handling the New Orleans Sunday Item.

Q. For how long did you stop them from that?

A. Until, in my judgment, the Item allowed the—put the pressure on the New York News—against the New York News.

Q. You say, "put the pressure"?

A. That is right. The Item allowed the papers to go back on the boxes, allowed some of the wholesalers that they had formerly stopped from selling to sell, allowed them to sell the New York News. They went back and allowed some [fol. 1775] corners to go together. So did I.

Q. Now, Mr. Coleman, there was some testimony that I think you heard in regard to taking the States away from people if they were handling the Sunday Item.

Did you, personally, go around and talk to anyone about that?

A. I did on one occasion.

Q. What was the occasion of your going around and talking to them about it, then?

A. Well, it has been brought out in this testimony here. Schwartz of the States and Jung of the States went around Canal Street and told the—The Item took the privilege of taking the daily Items away from some of the most prominent corners in town. Men who had been working on those corners for years had suffered in that arrangement, and in one or two cases, there had been the second time in which the Item had been taken away from them.

Mr. Jung and Mr. Schwartz told those men that if the Item gave them the privilege of handling the Item back again, that they could not handle it and that was told me and I thought about it. These men had been on the corners for years. I conferred with the management and I told them, in my judgment, I thought that was the wrong thing to do and I went around immediately and told, if my memory serves me correctly, about five or six of them, that if the Item would give them the papers back that it was all right for them to handle them and pay no attention to what Mr. Schwartz and Mr. Jung said.

I did that on about five or six of the major corners on [fol. 1776] Canal Street. That is the only time that I went out, actually, to talk to the news boys in connection with that proposition. I may have talked to one or two around the plant in passing by or one or two in the office on occasion, but nothing of any real importance.

[fol. 1777] Q. Well now, you say that this condition lasted up to sixty or ninety days, something like that, after they started publishing the Sunday Item, and then the pressure was off. Since that time, has it been the policy of The Times-Picayune Publishing Company to allow newsboys either the States or the Times-Picayune without regard to the fact of whether they are handling the Item, daily or Sunday?

A. All we want is for a—yes. All we want is for a newsboy to give us an even break in the manner of pushing.

Q. And I take it though, that it is still your policy that if you find that, in your opinion, the newsboy is pushing a rival paper, why, then you are going to put your own man on the corner?

A. As quickly as I possibly can, after I am convinced that he means to play ball that way.

Q. Mr. Coleman, does the Item have a drop-off sub-station in the building over at 601 North Street?

A. They did up until a couple of weeks ago. I haven't checked in a couple of weeks, but they did for years, and as far as I know it still goes on.

Q. And that is the building where the Times-Picayune is published, is it not?

A. That is right.

Q. And I believe they drop off there, in the entrance, the corner entrance, do they not?

A. Yes.

Q. Are they charged anything for that?

[fol. 1778] A. No, sir.

Q. Have you ever made any attempt to stop them from using that entrance as a drop-off sub-station?

A. No, sir.

Q. Mr. Coleman, in your opinion, is there more duplication of circulation between the Times-Picayune and the Item, or is there more duplication of circulation between the Times-Picayune and the New Orleans States?

Mr. Kramer: Objection, Your Honor. No possible basis has been shown for his knowledge. The Audit Bureau of Circulations' reports are in evidence and I suppose they can be examined as to them. How can he possibly know what the duplication is?

Mr. Wilson: I think if you will wait for the answer, you will find out that as a practical matter, it is almost impossible. The A.B.C. reports will not show that, Your Honor.

Mr. Phelps: If the Court please, Your Honor, I think the real purpose of this is to clairfy the testimony of some Government witnesses who expressed, without any foundation whatever, some rather definite views on the same subject.

The Court: Proceed.

A. In my opinion, it would be practically impossible to answer that question truthfully without making a most exacting survey, and even then I would question the authenticity of it.

By Mr. Wilson:

Q. Mr. Coleman, did you hear a Mrs. Hester Vauthier [fol. 1779] testify here the other day?

A. Yes, I did.

Q. Had you ever seen Mrs. Vauthier before she took the witness stand?

A. No, sir.

Q. To your knowledge, have you ever spoken to Mrs. Vauthier over the telephone or in person or in any other way?

A. Mrs. Vauthier—I don't like to say anything—I would say that I think Mrs. Vauthier is mistaken.

Q. Well, do you have any recollection of ever having spoken to Mrs. Vauthier either in person or over the telephone or any other way?

A. I never remember talking to Mrs. Vauthier.

Mr. Wilson: You may examine.

The Court: There is some question about that testimony with respect to the New York News, is that right?

Mr. Kramer: Yes, Your Honor. Page 878.

Cross-examination.

By Mr. Kramer:

Q. Mr. Coleman, I take it, it would be possible to tell about duplication of circulation between the Times-Picayune and the States, would it not, if you made an actual survey?

A. It would be possible to make a check between the Times-Picayune and States because we have the recorded list of home delivery and subscribers. It is not possible, in my opinion, to make a check on street sales or the country circulation, of which we have no list.

[fol. 1780] Q. Now, you were first asked about your background. I think you said you once were Classified Advertising Manager of the Times-Picayune. Is that right?

A. Yes, sir.

Q. When was that?

A. Times-Picayune and States.

Q. Oh, you were Classified Advertising Manager for both, is that it?

A. I was Classified Manager from 1928 to 19—the early part of 1934.

Q. And at that time, from 1928 through 1934, the Times-Picayune—strike that.

When the Times-Picayune Publishing Company acquired the States in 1933, did you also become Classified Advertising Manager for the States?

A. Yes, sir.

Q. Now, you next were asked about press runs on the A.M. edition. I think you said there were five press runs. I hand you Government Exhibits 93 and 94 and ask you if this isn't a copy of something that you swore was true?

A. Yes.

Q. Did you say yes?

A. That is right.

Q. Well now, if you will look at that exhibit, Exhibit 93, it speaks of press runs, Net, Press Runs and Time of Edi-
[fol. 1781] tions. Do you see that?

A. Yes.

Q. And how many editions, according to this Government Exhibit 93, does the Times-Picayune morning have?

A. It has five.

Q. Five editions?

A. That is right.

Q. And how many does the Times-Picayune-States Sunday have?

A. I didn't answer the question about the Sunday paper, if I remember correctly.

Mr. Wilson: I object to the question——

The Court: I think the witness is right for the purpose of the question. This is a document which he swore to. I think he is correct in stating that he did not testify as to the Sunday. As long as the record is clear on that——

Mr. Kramer: My understanding of his testimony was that he spoke of the Times-Picayune as being the morning edition where the document speaks of it as having five editions.

By Mr. Kramer:

Q. Is that correct, Mr. Coleman? Government Exhibit 93 which I have handed you and which you signed says that the Times-Picayune has five editions, doesn't it?

A. I said I was Circulation Manager of The Times-Picayune Publishing Company which has thirteen editions, six afternoon, six morning editions and one Sunday. Is that what you have reference to?

[fol. 1782] Q. Yes, that is precisely what I have reference to. Now, how many press runs does it have?

A. It has five daily press runs and eight—five press runs, eight regular press runs with a predate as of this period on the Times-Picayune, and it has six press runs on the afternoon States.

Q. Now, does the term "press runs" and "editions" mean the same thing to you?

A. Not the way I am trying to explain it to you.

Q. There is a difference, is that right?

A. That is right.

Q. Explain the difference.

A. Well, I was referring to the fact that I was Circulation Manager of the Times-Picayune and States and I was referring to the States afternoon as one edition and the Times-Picayune morning as one edition and the Sunday Times-Picayune States as one edition, and you add them together and you get thirteen. This is press runs.

Q. Now, my point to you is in Government Exhibits 93 and 94 which you signed, you referred to the Times-Picayune morning as having five editions, did you not?

A. I referred to it—this says here Press Run and Time of Edition.

The Court: I don't see that. If counsel sees it, I would like to have it pointed out.

Mr. Kramer: May I approach the bench?

The Court: Yes.

[fol. 1783] (Bench conference.)

The Court: Proceed.

Mr. Kramer: Will you read the question, please?

(Question read by reporter.)

A. The way you are describing it, I signed this statement that way, yes.

The Court: Isn't it customarily frequently to refer to an edition as an issue. Don't you refer to the Sunday edition of the paper and that means any edition that is printed on Sunday, doesn't it?

A. That is correct.

By Mr. Kramer:

Q. Do you know Ralph Jung?

A. Yes, sir.

Q. Do your know Louis Schwartz?

A. Yes, sir.

Q. Is it not true that these gentlemen are paid employees of the Times-Picayune Publishing Company?

A. That is right, Sir.

Q. And are you not their superior officer in the organization?

A. I am the head of the department in which they work.

Q. Is it not a fact that you gave these men instructions to contact news vendors and inform them that if they handled the Sunday Item they would lose their daily States?

A. Correct.

Q. You were asked about the suit against the Item. Do [fol. 1784] you remember when the Item stopped continuing to distribute the New York News? You testified the suit—I believe the letter, Defendant's 17 is dated in November. Do you remember when the Item stopped handling the New York News?

Mr. Phelps: If the Court please, the witness testified the suit was by the Item, not against it.

Mr. Kramer: That is right.

A. Repeat the question, please.

By Mr. Kramer:

Q. You testified that the Item brought a suit in November, 1949. Do you remember now when the Item finally stopped distributing the New York News?

A. I believe it was the latter part of December of that year.

Q. 1949?

A. Yes, sir.

Q. Now you mentioned that the Ifen had employed detectives and that then you employed detectives, is that right?

A. That is right.

Q. Do you have any recollection of about when you hired these detectives?

A. I hired them twice.

Q. Well, when was the first time?

A. During the period in which I mentioned, during '49, after—oh, September or October of '49.

Q. Now when was the second time?

[fol. 1785] A. During that period. The first check I wasn't satisfied because it was too short, and I was afraid to make accusations, so I sent them back to buy papers from the same spot for at least five or six different times until I knew what the score was, and that was just over a period of a week or two or three weeks that both checks were made, in two or three weeks.

Q. I see. You only had detectives in your employ all told for two or three weeks, is that right?

A. Now, wait a minute. I had detectives agencies employed the whole year round to find stolen bundles and things of that kind, but for that purpose, that is the only time I ever used them.

Q. You used the same detective agency that you use for checking bundles to do this work?

A. That is right.

Q. Can you tell me the name of the detective agency or agencies?

A. Pendleton Detective Agency.

Q. Do you know a Mr. Dean Andrews who was employed by that agency?

A. No, sir, I don't know him.

Q. You don't know whether he is or not?

A. I don't know whether he is or not.

Q. Do you know whether he was at that time?

A. I don't know that.

Q. You don't know?

[fol. 1786] A. No, sir.

Mr. Kramer: No further questions of Mr. Coleman.

Mr. Wilson: That is all, Mr. Coleman. Thank you very much.

(Witness excused.)

JOHN F. TIMS, a witness called by and on behalf of the defendants, after having been sworn, was examined and testified further as follows:

Direct examination.

By Mr. Wilson:

Q. You are Mr. John F. Tims who previously testified in this case?

A. I am.

Q. Mr. Tims, in the course of your testimony earlier in the lawsuit, you identified certain charts, and I believe that they were marked Defendant's Exhibits 5 through 13, inclusive. I hand you Defendant's Exhibit 5 and ask you if that is one of the charts identified by you?

A. Yes, sir.

Q. Mr. Tims, was that chart prepared under your direction?

A. It was.

Q. Will you just explain to the Court what steps you took to have that chart prepared.

A. After our counsel asked me to prepare such charts, I sent for Mr. Lagarde, who is the auditor, and Mr. Frisch-[fol. 1787] hertz, our Building Manager, and Mr. Martin Burke in charge of the Promotion Department, and told them what the object was and to prepare the information. This is what they came up with.

Q. Now, will you explain to the Court exactly what Defendant's Exhibit 5 is intended to show?

A. How the Times-Picayune Publishing Company employees are engaged. Total employees, 953, taken from the payroll the last week of March, 1951. It shows 682 of the

Times-Picayune Publishing Company employees as 71.6 per cent, play a part and produce in the morning, the afternoon and the Sunday edition.

It shows 1 works only on the morning and afternoon editions. It shows 120 work on the morning and Sunday edition; 55 work solely on the afternoon and Sunday edition; 36 work on the afternoon edition only; and 59 work on the Sunday edition only. Broken down by departments as of that date, there were 172 employees in the composing room, and they worked on the morning, the evening and Sunday editions.

Q. All of them.

A. All of them. The press room, there was a total of 62 employees. 55 of them rotated and worked on the morning evening and Sunday editions, and 7 of them confined their work exclusively to the Sunday edition. Those 7 are 7 pressmen that print the Sunday color comic section.

The photo engraving department, a total of 22 employees, and they work on the morning, evening and Sunday editions. The stereotype department, a total of 35 employ- [fol. 1788] ees, work on the morning, evening and Sunday editions. In the classified, there are a total of 43 employees, of which 41 work on the morning, evening and Sunday editions, 1 works on the morning and afternoon editions, and one works on the afternoon and Sunday editions.

In the display advertising department, there are a total of 75 employees. 74 work on the morning, evening and Sunday, and 1 on the Sunday only, confining his work to sales activity on the Sunday Dixie Rotogravure Section.

The circulation department, a total of 179 employees. 99 work on the morning, afternoon and Sunday editions, 29 on the morning and afternoon editions, 39 on the afternoon and Sunday editions, and 12 on the Sunday edition only.

In the mail room, a total of 73 employees. 13 work on the morning, evening and Sunday, 25 on the morning and Sunday editions, 10 on the afternoon and Sunday editions and 25 exclusively on the Sunday edition only.

The editorial department, a total of 160 employees. 39 work on the morning, afternoon and Sunday editions, 66 on the morning and Sunday editions, 5 on the afternoon and

Sunday editions, 36 on the afternoon edition only, and 14 on the Sunday edition only.

In the general, which we classify warehouses and truck drivers, and 'phone operators, a total of 17 employees. All do work for the morning, evening and Sunday editions.

In the purchasing department, a total of 10 employees. All do work for the morning, evening and Sunday editions. [fol. 1789] In the maintenance, 51 employees, all do work for the morning, evening and Sunday editions.

In the offices, a total of 3. All 3 work for the morning, evening and Sunday editions.

Q. Mr. Tims, I note that there are only three officers listed there, and I heard Mr. Coleman testify that he was Fifth Vice-President. Do you know who the three officers that are listed here?

A. Leonard K. Nicholson, myself and Mr. Chapman H. Hyams, III.

Q. Mr. Nicholson is the President?

A. He is.

Q. And you are General Manager and First Vice-President?

A. I am.

Q. And what is Mr. Hyams' title?

A. Second Vice-President.

The Court: Just a minute. I have something in mind here. You heard Mr. Conroy testify, I think, that he had allocated six employees to the mail room of the States. Do you recall that?

A. No, I do not recall. I was not here for all of Mr. Conroy's testimony.

The Court: I think the question was asked Mr. Conroy if he allocated six out of 73, but I see that 25 out of 73 work only on Sunday. He doesn't know the answer.

[fol. 1790] Q. Now, Mr. Tims, I hand you Defendant's Exhibit 6 and I ask you tell the Court what that is.

(Document handed to the witness.)

A. How The Times-Picayune Publishing Company equipment is employed, the total value acquisition of equipment, $2,305,338.70, without depreciation as of December 1, 1950.

It shows that 93.4 per cent of our equipment is used to produce the morning, evening and Sunday editions. I am getting down to these decimals here, Your Honor. One of them here is eight one hundred thousandths of one per cent, I believe.

Q. You have eight thousandths of one per cent?

A. Eight thousandths of one per cent is used.

The Court: You say, decimal 008?

A. For the morning and afternoon and decimal 61 is used for the morning and Sunday and decimal 14 is used for the afternoon and Sunday and decimal 29 is used for the evening, only, and 5.56 per cent is used for the Sunday, only: That embraces the color press that the Sunday comics are printed on and the equipment that we make the plates with in the Stereotype Department.

Q. All right. Now, will you explain as to the individual departments?

A. Down here (indicating), the equipment in the composing room. There is a total of $378,400.59. All that is used in producing the morning, evening and Sunday edition. That comprises about thirty-five intertype and linotype machines, two Ludlows, monotype, and I think we have [fol. 1791] sixteen or seventeen saws. That means we must have about thirty-four ad banks. We have between seventy-five and one hundred chases and numerous banks in the press room. The total value is $1,409,456.61. Ninety-one and seven-tenths per cent of that equipment is used to produce the morning, evening and Sunday editions and 8.3 is used to produce the Sunday edition, only, which is the press that prints the Sunday comics.

The Photo Engraving. Total value is $28,235.98. All of it is used to produce the morning, evening and Sunday editions.

The Stereotype value is $124,590.36 and 93.1 per cent is used to produce the morning, evening and Sunday and 6.9 per cent is used to produce comic plates for the Sunday paper.

Classified. Total value is $8,245.47 and 97.8 per cent of that equipment is used in the morning, evening and Sunday edition and 2.2 per cent is used for the morning and afternoon edition.

In the Display Advertising Department, the total value is $27,104.80 and 99.5 per cent is used for the morning, evening and Sunday edition and .5 per cent is used for the Sunday edition.

In the Circulation Department, the total value is $20,411.55 and 84.7 per cent is used on morning, evening and Sunday editions and 6.3 per cent is used for the morning and Sunday edition and 9.0 per cent is used for the afternoon and Sunday edition.

In the Mail Room, the total value is $43,832.34. It is all used for the morning, evening and Sunday editions.

In Editorial, the value is $37,247.84 and 42 per cent is used for morning, evening and Sunday and 30.8 per cent is [fol. 1792] for the morning and Sunday editions and 3.7 per cent is for the afternoon and Sunday editions and 17.9 per cent is for the afternoon edition, only and 5.6 per cent is for the Sunday edition, only.

In the Photography Department, the total value is $17,868.75. It is all used to produce the morning, evening and Sunday editions.

In the Stock Room, the total value is $7,762.30. It is all used in the morning, evening and Sunday editions.

In Maintenance, the total value is $60,402.70. It is all used for the morning, evening and Sunday edition.

Electrical Switch Board. The total value is $37,851.11. It is all used for the morning, evening and Sunday editions.

Credit and Cashier. The total value is $36,410.71. It is all used for the morning, evening and Sunday editions.

Auditing. The total value is $18,923.76. It is all used for the morning, evening and Sunday editions.

Out of Town. Total value, $1,413.98. It is all used for the morning and Sunday edition.

Q. What does Out of Town mean?

A. It means bureau in Washington, in Jackson, Mississippi, and in Baton Rouge, Louisiana, desks and things like that, typewriters.

Miscellaneous. Total value is $43,602.14. It is all used for the morning, evening and Sunday edition.

President. Total value, $3,577.71. It is used for the morning, evening and Sunday edition.

Q. Now, what is that last bar headed "President"? [fol. 1793] What does it mean there?

A. President of The Times-Picayune Publishing Company.

Q. That is office equipment?

A. Office equipment, yes.

Q. Now, will you look at Defendant's Exhibit 7 and tell the Court what that is.

(Document handed to the witness.)

A. This is The Times-Picayune Publishing Company basement floor. Here is the color press.

Q. You are indicating the parts shown in green?

A. I am indicating the part shown in green. That is the space that is occupied by the color press that prints the Sunday comics.

Next to it is the paper storing of rolls. There are different size rolls of 61-inch that they use in printing the Comic Section.

The rest of the building is used for presses, paper storage and boiler room, and it is all used for the morning, evening and Sunday edition, except that indicated by green.

Q. The only portion indicated by green is paper storage and Press No. 4.

A. Paper storage for 61-inch rolls that go on the comic press. Other paper storage is indicated all over there (indicating), which is used on our morning, evening and Sunday edition.

Q. Now, will you state what Defendant's Exhibit 8 is.

(Document handed to the witness.)

A. Defendant's Exhibit 8 is the first floor of The Times-[fol. 1794] Picayune Publishing Company and embraces the mezzanine or the press room. Again, we show some green here. The rest of it is indicated in red and that is used for the production of the morning, the evening and the Sunday editions. It shows the machine shop, storage rooms, lobby of the building as you enter either one of the elevators, two presses to the left of the entrance of the former entrance. Then, there is a wall coming through here (indicating) that separates the press room from this end

of the business office, which has the classified counter, the cashiers and the Credit Department.

Back through here (indicating), you lead out of the building going to Poydras Street where the wholesaler's receiving room is, where the trucks come up to take their papers and where they deliver supplies to us.

Q. Mr. Tims, will you look at Defendant's Exhibit 9 and tell the Court what that is and what it indicates.

(Document handed to the witness.)

A. Defendant's Exhibit No. 9 shows the second floor of The Times-Picayune Publishing Company. It is used entirely for the morning, evening and Sunday editions, as indicated on the chart.

Q. What use is made of the various spaces on that floor?

A. Well, there is the air condition room that air conditions that whole floor. Then, the switch board room, what we call the drives for the presses and they generate the power that operates these presses down in the press room. This (indicating) is the locker room, the men's room, and this (indicating) is our mail room, with tables and the like [fol. 1795] of that, except there is a personnel office here (indicating) that handles applications for the morning, evening and Sunday editions.

Q. Will you look at Defendant's Exhibit 10 and tell the Court what that is and what it indicates?

(Document handed to the witness.)

A. Defendant's Exhibit 10 is the third floor of The Times-Picayune Publishing Company building broken down into three departments, the Circulation Department, the Engraving Department and the Maintenance Department.

With the exception of what is indicated here in the Circulation Department of this portion (indicating) that is used for the afternoon and Sunday, this portion that is used for the morning and Sunday (indicating), the entire floor is used for the morning, evening and Sunday editions.

Q. Now, will you look at Defendant's Exhibit 11 and tell the Court what that is and what it indicates.

(Document handed to the witness.)

A. Defendant's Exhibit 11 is the fourth floor of The Times-Picayune Publishing Company, showing how that floor is utilized. In the upper lefthand corner is indicated green. That is the office of the people who work for the Dixie Rotogravure Magazine section. That is only a part of the Sunday paper. This other green (indicating) is to indicate the Sunday editor. The rest of the room here (indicating) is the Times-Picayune, morning and Sunday.

The red here (indicating) is the photo laboratory that is used for the morning, evening and Sunday editions.

[fol. 1796] The stripes going through here (indicating) is the Times-Picayune city room that is used for the morning and Sunday editions.

The blue coming all the way back here (indicating) is used for the afternoon edition, only. In here (indicating), you see—That is used for the afternoon and Sunday edition.

Q. What is that?

A. That is Sports.

Q. And you are indicating the parts where the white and red dots appear?

A. Right here, which is the same over here (indicating).

Q. What is this space used for (indicating)?

A. This space here (indicating) is used for the people who write some editorials. I think Mr. Kinsley sits in there and Mr. Corbin and Mr. Valois. The red that is indicated is used for a part of the morning, evening and Sunday operation.

Q. What are those various operations referred to?

A. This (indicating) is the Graphic Studio here. That (indicating) is the Times-Picayune managing editor who is also vice president of The Times-Picayune Publishing Company. This (indicating) is the Associated Press Room. This (indicating) is the men's room. That (indicating) is the Western Union Office. This (indicating) is the air conditioning. This (indicating) is the library here that is used for the morning, evening and Sunday. These (indicating) are the AP files that are used for the morning, evening and Sunday. Here (indicating) are our switch boards here. Here (indicating) is the Times-Picayune editorial writers [fol. 1797] that write just for the morning and Sunday.

This (indicating) is the President's office here: This is the Times-Picayune, society, morning and Sunday. This (indicating) is the States editor who contributes to the morning, evening and Sunday.

Q. As I understand, there are some spaces on there marked "Associated Press".

The Times-Picayune Publishing Company furnishes free space, do they not, to the Associated Press representatives here?

A. That is correct.

Q. Will you look at Defendant's Exhibit 12 and tell the Court what that is and what it indicates.

(Document handed to the witness.)

A. This is the fifth floor of The Times-Picayune Publishing Company building. That is the composing room and the stereotype departments. With the exception of the green block indicated in the lower righthand corner, all of the equipment is used for the morning, evening and Sunday edition.

That equipment there (indicating) is a nickels plant that makes the plates for the color comic press.

Q. That is the green?

A. That is the green block.

Q. Will you state what Defendant's Exhibit 13 is and what that indicates?

(Document handed to the witness.)

A. That is the sixth floor of the Times-Picayune Publish-
[fol. 1798] ing Company.

It indicates that the entire floor, with the exception of this green allocation which is used by the man who handles the Dixie Rotogravure Magazine Section and this space here (indicating) on the morning and afternoon edition that is used by Miss O'Brien, who writes a column in the morning edition, "Want Ad Reporter" and the evening edition, "Up and Down the Street". The rest of the floor is used in the morning, the evening and the Sunday edition.

Q. Is there any arrangement, between The Times-Picayune Publishing Company and the Item by which there is any exchange of materials or facilities or anything else?

A. Yes. There is. It has been going on since 1914.

Q. Will you explain to the Court just what the arrangement is?

A. Well, if we were to set today a full-page ad for D. H. Holmes or a five-column ad for Gus Meyer and the Item would like to get that mat and cuts, we will make them a mat and let them have it. They do likewise with us.

Q. Well, in other words, your mats are made available to them on advertising?

A. Mats and cuts.

Q. Mats and cuts are made available.

How is that exchange worked out? Do you get more from the Item than they get from you? Or vice versa?

A. They get more from us. I might add this: That there would be no abuses. Years ago, we set up an exchange basis [fol. 1799] that we wouldn't be setting it all and the Item picking up from us or the Item setting it all and we would be picking up from them, that a nominal charge of a half-cent a line, which is the equivalent of $12 a page. They will pick up more from us than we will from them.

[fol. 1800] Q. And does that same charge still apply?

A. Yes.

Q. Of a half cent a line?

A. Yes.

Q. Now, has there been any instances when the Item has found itself short of newsprint and you have done something for them?

A. Yes. We have. Whenever they, over the years, have been short of paper, why, if we had it, we would be glad to let them have it like we did other publishers.

Q. Well, have there ever been times when the Item has had requirements for a special size or width or newsprint which they didn't have available and you have made those special sizes available to them?

A. Yes. While I was away last July, I was informed when I returned home in September that our Advertising Department had declined from the D. H. Holmes Company something which you might call a stunt promotion, whereby they wanted to take and run a half sheet like this (indicating), a half-page ad on this side and a half page ad on the

other side and have four or five pages following, which we declined to do. They ran it in the Item; but, before they could do it, they didn't have the 61-inch rolls, so the International Paper Company does not supply the Item with 61-inch rolls, because they are only used for our color press, and we let them have seven rolls so that they could produce that business.

Of course, they paid for it at the price of—I think it was $106.00 a ton then or $104.00 a ton.

[fol. 1801] Q. But that was not an item that represented a profit to The Times-Picayune Publishing Company?

A. None at all.

Q. Mr. Tims, as I understand it, you are publishing thirteen editions a week at the building over there at 601 North Street, are you not?

A. That is correct.

Q. And in your six morning editions, that is, the six morning editions, the circulation totals something like 180,000, does it not?

A. Approximately that.

The Court: Daily?

Mr. Wilson: Daily, yes, your daily circulation.

By Mr. Wilson:

Q. Your Sunday edition totals about 320,000, does it not?

A. No, not that much, in the neighborhood of 290.

Q. 290,000?

A. Yes.

Q. Your daily evening edition has a circulation of about 100,000, does it not?

A. Approximately, a little under.

Q. Well, tell me: what determines how much equipment you need in your plant to turn out those editions?

A. Well, the edition that has the greatest circulation.

Q. And as I understand it, when that equipment is being used for that edition, that is the amount of equipment [fol. 1802] needed to handle your maximum production over there, is it not?

A. That is correct.

Q. And you can handle the evening edition on the same or less equipment, can you not?

A. Correct.

Q. So you are not required to put in any additional equipment to handle the evening edition, are you?

A. Not in my judgment.

Q. Well now, Mr. Tims, who receives the revenue that you acquire from a publication or from publishing a morning edition and an evening edition and a Sunday edition?

A. The Times-Picayune Publishing Company.

Q. And who pays for all the newsprint and the ink that go into publishing those editions?

A. The Times-Picayune Publishing Company.

Q. And who pays the salaries of the people that are engaged in publishing those editions?

A. The Times-Picayune Publishing Company.

Q. And in whose name do you carry all bank accounts and safe deposit boxes that are connected with the operation of that business?

A. The Times-Picayune Publishing Company.

Q. And who owns the building and the presses and all of the equipment that are used in that operation?

A. The Times-Picayune Publishing Company.

Mr. Wilson: That is all.

[fol. 1803] Cross examination.

By Mr. Kramer:

Q. I am handing you "D-5", Mr. Tims. You will notice in the top center it says, "Display, Total 75 Employees and 74 According to Chart Worked for All Three, and One for Sunday Edition Only."

What does that display mean? Is that retail display advertising?

A. It means retail display, and every one that is on that payroll.

Q. Well now, who is the retail display advertising manager for the States?

A. Nelson Swayze.

Q. Do you know how much time Mr. Swayze spends on retail advertising for The Times-Picayune?

A. I don't know exactly, but he spends a good deal. For instances, he handles the Krauss account for the Times-Picayune morning and Sunday, as well as the States' afternoon and others.

Q. You don't know whether it is correct to say that most of his time is spent on States' advertisers?

A. I think that would be a fair statement.

The Court: You mean, more is spent on States than Picayune?

A. Yes.

The Court: You say "most".

A. But he does for all, for the morning and the evening [fol. 1804] and the Sunday.

By Mr. Kramer:

Q. And how about Mr. Charlton? Would the same be true of him, Mr. Tims?

A. Yes, he handles most of the Times-Picayune, but does handle some for the States.

Q. Now, I am going to show you "D-11". You notice that under "States' Editorial", it is keyed for afternoon and Sunday editions. Is that right, Mr. Tims?

A. That is right, Sir.

Q. Is it not correct that that practice commenced on the 27th day of November, 1949? By that practice, I mean the practice of putting a States editorial page in the Sunday paper?

A. I wouldn't recall the exact date, Mr. Kramer.

Q. I will try to refresh your recollection, without encumbering the record.

I hand you some photographs.

Mr. Kramer: Would Your Honor like to see them? I am not going to offer them.

(Documents handed to the Court.)

By Mr. Kramer:

Q. I ask you to look that over and tell me if it refreshes your recollection as to whether it is not correct that that practice started on November 27, 1949. I call your attention particularly to this passage marked "Metropolitan Section".

[fol. 1805] A. Yes. I see it. That is correct.

Q. That is correct? That is the right date? November 27, 1949?

A. From this announcement here (indicating), I presume that that is the same date, Mr. Kramer. Yes. That is correct.

The Court: What is the question? What do you understand by this? That they did not have these features before November, 1949?

Mr. Kramer: That they did not run the States editorial page in the Sunday Times-Picayune until commencing with the Sunday issue of November 27, 1949.

I may say to Your Honor that that is what I have been informed by people who ought to know.

The Court: That is a new section? That is, the Metropolitan Section was a new section started on that date?

Mr. Kramer: Yes.

The Court: I don't know what it proves.

Mr. Kramer: That was the first time the States' editorial writers ran their page in the Sunday paper.

Mr. Wilson: That is the first time they ran a page under the name "Metropolitan Section".

Mr. Kramer: Then I will have to go over it, Your Honor, because I may be misinformed, but it is my sincere belief——

The Court: Well, it only means that the States' editorial writers wrote for the Picayune for the first time on that day.

[fol. 1806] Mr. Kramer: That is my understanding, exactly as Your Honor put it.

The Court: Many of these features appeared previously in other sections of the paper. Isn't that correct?

A. I think that is correct.

By Mr. Kramer:

Q. Now, my next question, Mr. Tims, is: I will try to make this short, Your Honor.

The Court: That is all right. Take all the time you want.

By Mr. Kramer:

Q. By features, did you not mean the features written by—I don't know if that (indicating) will help you or not.—By States' editorial writers? Or did you not mean syndicated columns?

A. Well, it meant the aggregate of all. For instance, the Metropolitan Section was really created because we just about got our last press equipped where we could print three to four sections on that particular run on Friday night, and we took material that was in the Society Section and also in the Parade of Events Section and built this additional section whereby we could sell D. H. Holmes the front page of that section like we had been doing for years for Maison Blanche on the front page of the Parade of Events Section.

Q. My question is, do you know whether prior to November 27, 1949, States' editorial writers regularly wrote editorials for the Times-Picayune-New Orleans States?

[fol. 1807] A. I couldn't answer that, because that is on another floor. I am quite sure that there have been times that they have written back and forth. I don't know.

Q. Again referring to Defendant's Exhibit 11, you will notice that the Times-Picayune Managing Editor is keyed for morning, afternoon and Sunday.

Are you familiar with what——

(Strike that.)

Is Mr. Healy the man designated as the Times-Picayune man?

A. That is correct. That is his office.

Q. Do you know what he does?

A. He is the Managing Editor of the Times-Picayune morning edition and Managing Editor of the Times-Picayune-New Orleans States Sunday edition, and also the Vice-President of The Times-Picayune Publishing Company.

Q. He is not Editor or Managing Editor of the States afternoon?

A. He is not.

[fol. 1808] Mr. Kramer: If the Court please, I understand that the defendant's last witness is Mr. Tims, and the Government would have to call him in rebuttal. Technically, the questions which are brief that I am about to ask him probably should be classified as rebuttal. I was wondering if, as a matter of convenience, there would be any objections to my asking him the questions now, or whether we should wait until tomorrow or Thursday. I don't think it will take more than twenty minutes, at the most.

Mr. Phelps: If the Court please, we have no objection. We are ready to rest our case. The record should show that the defendants rest, of course, before Mr. Kramer goes on with his rebuttal.

Mr. Kramer: That is what I meant.

Mr. Phelps: Have you completed your cross-examination?

Mr. Kramer: Yes.

Mr. Wilson: We rest.

Mr. Phelps: We have no redirect, and the defendants rest their case, if the Court please.

The Court: Have these charts been offered?

Mr. Wilson: Yes, sir; they were offered after Mr. Flurry made them competent.

The Court: Now, Gentlemen, there is one matter you may have taken care of, but you will remember there were certain charts, captions of which were not satisfactory.

Mr. Kramer: The Government is now undertaking to have them corrected.

[fol. 1809] The Court: You gentlemen said you would get together.

Mr. Wilson: Mr. Kramer and I have agreed on the designation. I understood yesterday that they were having them corrected.

The Court: I see. All right.

Mr. Kramer: May the record show that Mr. Tims is now called by the Government in rebuttal, as an adverse witness.

REBUTTAL EVIDENCE ON BEHALF OF THE GOVERNMENT

JOHN F. TIMS, JR., a witness recalled by and on behalf of the Government, in rebuttal, having previously been sworn, was further examined and testified as follows:

Cross examination.

By Mr. Kramer:

Q. Mr. Tims, is it customary in the newspaper business to treat daily advertising lineage and daily circulation separate and apart from Sunday advertising lineage and Sunday circulation?

A. It depends upon what you are trying to prove.

Q. In selling advertising, is that done?

A. I think it is done both ways. Where a paper can show a classification, maybe that they carry more seven days than the paper will six days, it probably would use the seven day figure instead of the six day. I don't know just what you mean.

Q. (Handing document to witness.) I hand you Govern- [fol. 1810] ment Exhibit Number 151 for identification, marked Number 9 in the left hand corner, and ask you if you can tell me what it is.

A. It is quite a long letter, four pages, that I wrote to a Mr. Covey, National Manufacturer and Stores Corporation, Atlanta, Georgia, on December 20, 1940.

(Document marked "G-151" for identification.)

Mr. Kramer: I offer Government Exhibit 151 in evidence.

Mr. Wilson: Well, I object to it. There has been no evidence offered by the defendants having anything to do with that account. This is not proper rebuttal.

The Court: This is going pretty far back, isn't it?

Mr. Kramer: I am not relating it to accounts.

The Court: What is the purpose?

Mr. Kramer: The purpose for which I would conceive to be proper rebuttal is to show——

The Court: The purpose you concede?

Mr. Kramer: The purpose which I "conceive" it to be proper rebuttal is in connection with Mr. Ladreyt's testi-

mony about daily and Sunday. I am not, of course, offering it for accounts. It has nothing to do with any account Mr. Ladreyt mentioned, and furthermore, it was written before the time Mr. Ladreyt's testimony referred to——

The Court: In connection with what portion of Mr. Ladreyt's testimony?

Mr. Kramer: The portion of Sunday lineage; that portion which shows the connection between daily and Sunday. [fol. 1811] Here is Mr. Tims writing a letter in which he considers Sunday apart from daily.

Mr. Wilson: That has nothing to do with the issue of whether or not advertising that went into the Sunday paper might not have been published in the daily paper if there had been no Sunday paper to put it in. I can see no relevance in the document, nor can I see how it can possibly be proper rebuttal. I, therefore, object to it.

The Court: As a matter of fact, there is no dispute but that The Times-Picayune Publishing Company sells advertising in the Sunday edition only, doesn't it?

Mr. Kramer: I don't think there is any dispute about it, Your Honor.

The Court: They must treat that lineage separately from week day lineage.

Mr. Kramer: I should suppose so. I think the letter shows that they do. I would like to say one other thing:

In the event Your Honor finds it is improper rebuttal, with which I respectfully disagree, I would still ask the mercy of the Court to get it in evidence.

The Court: What does it prove? What is the purpose of the letter? I still don't see the relevancy of it.

Mr. Kramer: Well, I think the letter goes to a number of issues which were not raised on rebuttal, if that is what you want to know. I think it goes to the issue of whether or not the Times Picayune on Sunday is part of the Sunday paper, or whether it is a joint enterprise. I think that by mentioning the Times-Picayune as being the only Sunday [fol. 1812] paper one, two, three, four, five, six times, it has some weight there. I also conceive it to be my duty as Government counsel to call to the attention of Mr. Wilson that that is one place—the only one the Government has been able to find where the witness did, prior to the law-

suit, refer to the New Orleans States as an afternoon edition.

Mr. Wilson: While I appreciate your producing that, I still don't want to start in and retry this lawsuit. I think we ought to hold down the scope of this rebuttal testimony.

Mr. Kramer: I assure you the scope is going to be held down to a very narrow basis.

The Court: Well, I want to give counsel every opportunity to show the relevancy of this, but I cannot, for the life of me, see what this adds to this case, except to increase the size of the record. It is simply another sales letter written by the witness in which he makes comparisons of rates in his paper and points out the rates in the three local papers, and the benefits to advertisers who use his paper. I don't see that it adds anything to it.

What does it rebut?

Mr. Kramer: It shows that it is customary. I presume that when the General Manager of the defendants separates his Sunday lineage from his daily lineage in a sales letter, it shows that the two types of advertising are considered quite differently by the man.

The Court: Who has said otherwise? What witness has testified otherwise?

Mr. Kramer: It is my understanding the entire defense—[fol. 1813] not the entire defense, but a large part of the defense to our lineage case failed to take into account Sunday, and we are trying to establish a market for Sunday versus daily advertising.

[fol. 1814] Mr. Phelps: If the Court please, if the purpose is to show that in sales letters The Times-Picayune Publishing Company has separated daily and Sunday lineage, there are a number of Government exhibits which I think already do that. I don't see where the letter has any bearing other than that.

The Court: As a matter of fact, throughout this trial, the distinction has been made between weekday lineage and Sunday lineage, particularly in connection with the American Magazine, whether it is proper to consider in calculating the loss of lineage in the Item, weekly, the advertising which is carried in the American Magazine.

Mr. Kramer: In view of Your Honor's statement, the Government withdraws the offer of Exhibit G-151. I agree with Your Honor. I don't think it is terribly important or I wouldn't withdraw it.

May I have the exhibit back, so it doesn't get mixed up in Your Honor's bunch.

The Court: What is that number?

Mr. Kramer: G-151.

The Court: I think I marked one of those. You might erase that.

(The exhibit marked "G-151" for identification was withdrawn.)

Mr. Kramer: In order to avoid more delay, do I understand that it will be improper rebuttal for me to ask Mr. Tims concerning this *addition* of his newspaper issue?

The Court: Suppose you ask him the question.

[fol. 1815] By Mr. Kramer:

Q. Is it still your position that the States does not have a separate existence as a newspaper from that of the Times-Picayune, morning?

A. I make the statement that The Times-Picayune Publishing Company publishes the Times-Picayune, morning, the New Orleans States, evening, and The Times-Picayune-New Orleans States, Sunday.

Q. Well, does the New Orleans States in the evening, as a newspaper, have a separate existence from that of the Times-Picayune in the morning?

A. What do you mean by "separate existence"?

Q. I hand you G-152 for identification.

(The document referred to was marked "G-152" for identification.)

(Document handed to the witness.)

A. What do you wish me to do? Read this?

Q. I want you to read it to yourself.

A. From here (indicating)?

Q. From here to here (indicating).

A. Where was this published?

Q. This is an extract from the Times-Picayune, Centennial Edition, Monday, January 25, 1937.

Mr. Wilson: Are we reading the big print or the fine print?

Mr. Kramer: The big print.

[fol. 1816] A. I have read it.

By Mr. Kramer:

Q. What I meant by "separate newspaper" was continuing it as a separate existence.

A. I don't subscribe to this. The writer who wrote this story may have been Tom Dabney. I, for one, didn't see this point. A lot of things go into the newspaper I don't see, I don't subscribe to it.

This part here: "In 1933, the Times-Picayune bought the New Orleans States.

Q. Will you read the second page to yourself, Mr. Tims?

A. The second page?

Q. Yes, the second page, center column.

A. You want just the first paragraph?

Q. Yes. Do you agree with that statement?

A. No. I don't.

The Court: What statement is that?

Mr. Kramer: The statement contained on Page 2.

A. Partially, I agree with it; partially, I don't. Do you want to know the part I agree with?

By Mr. Kramer:

Q. Certainly.

A. "The two Sunday papers were put together. On weekdays, that paper continues its separate publication, a steadily growing tree alongside the largest spread of the other."

I can't go along with that, because it is another; not a [fol. 1817] separate publication; it's a separate edition.

Q. You don't have any doubt this is an accurate photograph?

A. I am positive it is.

Mr. Wilson: Where was it photographed?

Mr. Kramer: I think we got it from the Item; but I found it. I might tell the Court I found it as a result of reading Exhibit 9 which refers to the Centennial Edition.

The Court: I didn't hear what you said.

Mr. Kramer: I was reading Exhibit 9, which I offered as "G-151" and then withdrew, and noted he referred to the Centennial Edition. I got the notion there might be something of value to the Government's case in there.

I offer "G-152" in evidence.

Mr. Wilson: If the Court please, I don't see how we can try this case on the basis of old newspapers. The witness has said he did not agree to what was said in the document, and I didn't realize that anything that happened to get printed in the newspaper immediately became proper evidence in the case. I object to it as having no probative value, whatever. I can't see that it remains within the scope of correct rebuttal evidence.

Mr. Kramer: I think it is, no doubt, within the proper scope of rebuttal. I ask the question whether it still continues to be the same. He said: "Yes. It still continues to be the same".

If Your Honor thinks it has no probative value, I suppose that is another problem.

[fol. 1818] The Court: Do you think the officers of the newspaper, and the publisher, are responsible for every statement that appears in the paper? I mean, do you think it is an admission?

Mr. Kramer: I do. I think they are responsible for everything that appears in the paper about the paper; yes, sir: About the paper.

Mr. Phelps: The freedom of public expression would be pretty well quashed if every writer, whether he was criticizing a music drama or a book or expressing his opinion about a business transaction, had to get the approval of the management before the publication of his particular views could appear.

Mr. Wilson: I am sure that we publish several columnists in our newspaper for whom we would not care to take responsibility.

The Court: I see the purpose of the offer and what Government counsel has in mind. These are statements made at a time not suspicious.

Mr. Wilson: By whom?

The Court: By the newspaper talking about itself.

Mr. Kramer: That is right, Your Honor.

The Court. That is what it amounts to. It is offered for the purpose of showing what the newspaper, itself, thought about it.

Mr. Kramer: In 1937.

The Court: What it was and what they were: What the newspaper thought they were at that time.

[fol. 1819] Mr. Kramer: That is right, Your Honor.

The Court: I will admit it.

(The document marked "G-152" for identification, was received in evidence.)

Mr. Kramer: Now, if the Court please, I would like to describe the remainder of the rebuttal that the Government has, off the record, if I may.

The Court: Off the record.

(Discussion off the record.)

The Court: The Court stands at recess until tomorrow morning at 10:00 o'clock.

(Whereupon, at 5:20 o'clock, p. m., the trial was adjourned until Wednesday, May 16, 1951.)

[fol. 1820] PROCEEDINGS OF MAY 16, 1951

(The trial was resumed, pursuant to adjournment, on Wednesday, May 16, 1951, at 10:00 o'clock, a. m.)

Mr. Kramer: If the Court please, the Government moves to strike that portion of the testimony given by the witness, Roland Ladreyt, in defense, which was opinion testimony, on the ground that the testimony fails to show any adequate factual basis or foundation for the opinions which he expressed.

Mr. Phelps: If the Court please, it seems to me that goes

entirely to the weight of the testimony. The man certainly knows as much about national advertising as anybody in the city of New Orleans, if not substantially beyond those limits.

The Court: The motion is overruled.

Mr. Kramer: I call Mr. Houghton, please.

HARRISON F. HOUGHTON, a witness recalled by and on behalf of the Government, in rebuttal, having previously been sworn, was further examined and testified as follows:

Direct examination.

By Mr. Kramer:

Q. Are you the same Harrison F. Houghton, who has previously testified in this case?

A. Yes, sir.

Q. Mr. Houghton, I hand you two pamphlets and ask you to state what they are.

(Document handed to the witness.)

[fol. 1821] A. The first is the Annual Report of Media Records for New Orleans, Louisiana, for the year 1949.

The second is the Annual Report of Media Records for New Orleans, Louisiana, for the year 1950.

Q. I am going to ask you to read off the lineage figures for 1949 and '50, as shown by Media Records for each of several accounts for all New Orleans daily and Sunday newspapers for 1949 and '50, omitting the lineage carried exclusively in the American Weekly or in This Week Magazines.

The first account is Holsum Bread.

A. 1949: T-P, morning, 18459. T-P and States, Sunday, zero. Item, evening, 26992. States, evening, 11205.

1950:

The Court: Just a minute. If you are going to put in the Picayune-States on Sunday, why not put in the American Magazine. Of course, you can put in anything you want.

Mr. Kramer: Mr. Ladreyt testified that he was excluding the American Weekly and This Week Magazine from his calculations.

Mr. Phelps: Of course, his comparison was strictly between the six-day Item and the Sunday Item. If counsel wishes to make a comparison between any other editions, it seems to me that the entire picture should go in.

Mr. Kramer: We have no objection to putting it in. I thought they would object if we did.

Mr. Phelps: We see no relevance to the testimony at all; [fol. 1822] but if counsel proposes to make it relevant in some manner, we will wait and see.

Mr. Kramer: All right.

By Mr. Kramer:

Q. Continue reading American Weekly and This Week lineage where you find it, Mr. Houghton, and so indicate.

Was there any of such lineage for 1949 for Holsum Bread?

A. No, sir.

1950: T-P, morning, 17722. T-P and States, Sunday, zero. Item, evening, 28010. Item, Sunday, 2132. States, evening, 15301.

Q. Coca Cola.

A. 1949: T-P, morning, 5692. T-P and States, Sunday, 8608. Item, evening, 6670. States, evening, 6741.

1950: 9107 for the T-P, morning. T-P and States, Sunday, 2608. Item, evening, 9211. Item, Sunday, 1612. States, evening, 7904.

Q. Johnson's Wax.

Mr. Phelps: If the Court please, if the witness purports to be reading accurately from Media Records, he left out This Week and American Weekly figures.

By Mr. Kramer:

Q. Will you read the American Weekly?

A. I beg pardon. They are carried on a different line. I didn't notice them.

[fol. 1823] For 1950, Coca Cola: T-P and States, Sunday,

850 for the This Week. For the Item, Sunday, 1000 for the A. W. Col.

Q. Johnson's Wax Products.

A. 1949: T-P, morning, zero. T-P and States, Sunday, 1904-C. Item, evening, zero. States, evening, zero.

1950: Johnson's Wax Products. T-P, morning, 9251. T-P and States, Sunday, 3175-C. Item, evening, zero. Item, Sunday, 3192. States, evening, 6827. Johnson's Wax Products. T-P, morning, zero. T-P and States, Sunday, 4277. Item, evening, zero. Item, Sunday, zero. States, evening, zero.

Johnson's Wax.

Q. Just Johnson's Wax Products is all.

A. Without the apostrophe-s, I presume. There are three titles.

Q. There are three titles?

A. The first one says Johnson's Wax P-r-o-d-s.

Q. Have you read that one?

A. No.

Q. Read that.

A. T-P, morning, zero. T-P and States, Sunday, 2550, T. W. Col. Item, evening, zero. Item, Sunday, 3000 A. W. Col. States, evening, zero.

Q. Hotels and Resorts, totals.

A. 1949: T-P, morning, 6364. T-P and States, Sunday, 31897. Item, evening, 5427. States, evening, 1586.

[fol. 1824] 1950: T-P, morning, 7592. T-P and States, Sunday, 30291. Item, evening, 671. Item, Sunday, 14246. States, evening, 7349.

Q. Youngstown Kitchen Aider.

A. 1949: T-P, morning, 1000. T-P and States, Sunday, 2345. Item, evening, 5210. States, evening, 1000.

1950: T-P, morning, 3060. T-P and States, Sunday, zero. Item, evening, 1352. Item, Sunday, 1215. States, evening, 960.

Q. Did you just read Youngstown Kitchen Aider? Or Youngstown Kitchens?

A. Youngstown Kitchens. Oh, did you want Kitchen Aider, also?

Q. Yes.

A. That appeared in 1949 with the following figures: T-P, morning, zero. T-P and States, Sunday, 1500. Item, evening, 1674. States, evening, zero.

There was no account of that title in 1950.

Q. That you have found?

A. That I have found.

Q. Waste King Pulverator.

A. That did not appear in 1949.

Q. 1950.

A. 1950: T-P, morning, 2382. T-P and States, Sunday, zero. Item, evening, 796. Item, Sunday 1514. States, evening, 2370.

Q. Helis, William, and spell "Helis".

A. H-e-l-i-s comma William, 1949: T-P, morning, zero. T-P and States, Sunday, zero. Item, evening, 2400. States, evening, 2400.

[fol. 1825] 1950: T-P, morning, zero. T-P and States, Sunday, zero. Item, evening, zero. Item, Sunday, 2400. States, evening, zero.

Q. Hadacol.

A. 1949: T-P, morning, 1074. T-P and States, Sunday, 198. Item, evening, 10533. States, evening, 1015.

1950: T-P, morning, 55530. T-P and States, Sunday, 8307. Item, evening, 71763. Item, Sunday, 26531. States, evening, 58081.

Q. Political, Miscellaneous.

A. 1949: T-P, morning, 10351. T-P and States, Sunday, 2544. Item, evening, 9399. States, evening, 9481.

1950: T-P, morning, 68024. T-P and States, Sunday, 9750. Item, evening, 62435. Item, Sunday, 2331. States, evening, 69988.

Q. Jules Messner, Inc.

A. Messner, M-e-s-s-n-e-r, Julian? Is that correct? Is that the correct account?

Q. Yes.

A. 1949: T-P, morning, zero. T-P and States, Sunday, zero. Item, evening, 3079. States, evening, zero.

1950: T-P, morning, zero. T-P and States, Sunday, zero. Item, evening, zero: Item, Sunday, 1005. States, evening, zero.

Q. Unicorn Press.

A. 1949: T-P, morning, 2400. T-P and States, Sunday, 5712-C. Item, evening, 2400. States, evening, 2400.

1950: T-P, morning, 7280. T-P and States, Sunday, [fol. 1826], 7299-C. Item, evening, 4800. Item, Sunday, 1904-C. States, evening, 7280.

Q. New Orleans Public Service.

A. 1949: T-P, morning, 72074. T-P and States, Sunday, 12386. Item, evening, 85340. States, evening, 84571.

1950: T-P, morning, 62095. T-P and States, Sunday, 10091. Item, evening, 69624. Item, Sunday, 2380. States, evening, 70517.

Q. Admiral Television.

A. 1949: T-P, morning, 1147. T-P and States, Sunday, 3400. Item, evening, 745. States, evening, 1141.

1950: T-P, morning, 8736. T-P and States, Sunday, 6800. Item, evening, 8395. Item, Sunday, 9000 A. W. Col.

Q. DuMont Television.

A. I am not through with that one.

Q. Excuse me.

A. Also, 1000 for Item, Sunday. States, evening, 8696.

Q. DuMont Television.

A. 1949: T-P, morning, 7891. T-P and States, Sunday, zero. Item, evening, 2554. States, evening, 102.

1950: T-P, morning, 6838. T-P and States, Sunday, 609. Item, evening, 3415. Item, Sunday, 1005. States, evening, 6850.

Q. Emerson Television.

A. 1949: T-P, morning, zero. T-P and States, Sunday, zero. Item, evening, 890. States, evening, zero.

1950: T-P, morning, zero. T-P and States, Sunday, 2400. Item, evening, 1200. Item, Sunday, 3000. States, evening, zero.

[fol. 1827] Q. General Electric Television.

A. 1949: T-P, morning, 11131. T-P and States, Sunday, 664. Item, evening, 3394. States, evening, 8557.

Q. Motorola Television.

A. Wait a minute. I haven't given the 1950.

Q. Excuse me.

A. 1950 for GE Television: T-P, morning, 7064. T-P

and States, Sunday, 1930. Item, evening, 3698. Item, Sunday, 1750. States, evening, 6946.

Q. Motorola Television.

A. 1949: T-P, morning, 1430. T-P and States, Sunday, zero. Item, evening, 686. States, evening, 959.

1950: T-P, morning, 7064. T-P and States, Sunday, 1930. Item, evening, 3698. Item, Sunday, 1750. States, evening, 6946.

Q. Philco Television.

Mr. Phelps: Excuse me. What was that one?

Mr. Ladreyt: 1950. He read GE. He is reading the wrong one.

A. I am sorry. That was supposed to be Motorola, was it not?

By Mr. Kramer:

Q. Right.

A. Motorola Television. 1950: T-P, morning, 8264. T-P and States, Sunday, 1794. Item, evening, 2982. Item, Sunday, 7958. States, evening, 8278. Also under Motorola Television in 1950: T-P and States, Sunday, 2125, T. W. Col. Item, Sunday, 1500, A. W. Col.

[fol. 1828] Q. Philco Television.

A. T-P, morning, 1949, 4161. T-P and States, Sunday, 1500. Item, evening, 2985. States, evening, 3970.

1950: T-P, morning, 6490. T-P and States, 7200 plus 2720, T. W. and 3400 T. W. Col. Item, evening, 8475. Item, Sunday, 2400 plus 1200 A. W. plus 4000 A. W. Col. States, evening, 5490.

Q. Westinghouse Television.

A. 1949: T-P, morning, 1000. T-P and States, Sunday, zero. Item, evening, 3554. States, evening, 502.

1950: T-P, morning, 5635. T-P and States, Sunday, 975. Item, evening, 1065. Item, Sunday, 1085. States, evening, 5644.

Q. Chicago and Southern Air Lines.

A. 1949: T-P, morning, 8745. T-P and States, Sunday, 7690. Item, evening, 10276. States, evening, 8681.

1950:

Mr. Phelps: The figure "10275" should read "10276."

A. Pardon me.

By Mr. Kramer:

Q. Continue.

A. 1950: T-P, morning, 15543. T-P and States, Sunday, 3492. Item, evening, 14561. Item, Sunday, 830. States, evening, 15466.

Q. National Air Lines.

A. 1949: T-P, morning, 18535. T-P and States, Sunday, [fol. 1829] zero. Item, evening, 20016. States, evening, 18411.

1950: T-P, morning, 20688. T-P and States, Sunday, 1873. Item, evening, 20785. Item, Sunday, 2742. States, evening, 20760.

Q. Continental Trailways.

A. That is listed as "Trailways" in 1949.

Q. No. I want Continental Trailways, if there is any there. You may not find it. If so, state——

Mr. Ladreyt: Same company.

A. There is no——

By Mr. Kramer:

Q. No Continental Trailways for '49?

A. That is right.

Q. Give me Continental Trailways for 1950.

A. T-P, morning, 7279. T-P and States, Sunday, 1849. Item, evening, 8452. Item, Sunday, 981. States, evening, 6839.

Q. Give me Trailways, 1949.

A. T-P, morning, 3620. T-P and States, Sunday, zero. Item, evening, 6564. States, evening, 7730.

1950: T-P, morning, zero. T-P and States, Sunday, zero. Item, evening, zero. Item, Sunday, 675. States, evening, zero.

Q. Chicago, Burlington & Quincy Railway.

A. 1949: T-P, morning, 2264. T-P and States, Sunday, zero. Item, evening, 2326. States, evening, 1464.

1950: T-P, morning, 1408. T-P and States, Sunday, 416. [fol. 1830] Item, evening, 416. Item, Sunday, 1414. States, evening, 1400.

Q. Kansas City Southern Railway.

A. 1949: T-P, morning, 16742. T-P and States, Sunday, 6110. Item, evening, 24791. States, evening, 15534.

1950: T-P, morning, 7582. T-P and States, Sunday, 4186. Item, evening, 10928. Item, Sunday, 4818. States, evening, 7662.

Q. Louisville & Nashville Railroad.

A. 1949: T-P, morning, 6202. T-P and States, Sunday, 2953. Item, evening, 9048. States, evening, 6324.

1950: T-P, morning, 9059. T-P and States, Sunday, 2621. Item, evening, 9225. Item, Sunday, 2181. States, evening, 9142.

The Court: Didn't you give us the States twice?

By Mr. Kramer:

Q. Let's read that one over again.

A. For 1950?

Q. Yes.

A. Was that Louisville & Nashville?

Q. That is right. Railroad.

A. Louisville & Nashville, 1950: T-P, morning, 9059. T-P and States, Sunday, 2621. Item, evening, 9225. Item, Sunday, 2181. States, evening, 9142.

Q. United Fruit Company.

A. 1949: T-P, morning, zero. T-P and States, Sunday, 2566. Item, evening, 2048. States, evening, zero.

1950: T-P, morning, zero. T-P and States, 2289. Item, [fol. 1831] evening, zero. Item, Sunday, 1469. States, evening, zero.

Q. The entire classification of oil and gasoline; total only.

A. 1949. T-P, morning, 75295. T-P and States, Sunday, 6895. Item, evening, 48109. States, evening, 86201.

1950: T-P, morning, 71413. T-P and States, Sunday, 13089. Item, evening, 44444. Item, Sunday, 17431. States, evening, 93684.

Q. Cadillac Car:

A. 1949: T-P, morning, 28402. T-P and States, Sunday, zero. Item, evening, zero. States, evening, zero.

1950: T-P, morning, 13966. T-P and States, Sunday, 1000. Item, evening, 965. Item, Sunday, 840. States, evening, 13459.

Q. Chevrolet Car.

A. 1949: T-P, morning, 7920. T-P and States, Sunday, 28823. Item, evening, 21353. States, evening, 7286.

1950: T-P and States, 7650 T. W. Col. Item, Sunday, 9000 A. W. Col. For the regular T-P, morning, 16761. T-P and States, Sunday, 23075. Item, evening, 25185. Item, Sunday, 4129. States, evening, 16772.

Q. Chrysler Institutional Advertising.

A. 1949: T-P, morning, 3465. T-P and States, Sunday, 14400. Item, evening, 1060. States, evening, zero.

1950: T-P, morning, 9680. T-P and States, Sunday, 29830. Item, evening, 8990. Item, Sunday, 7200 plus 5000 A. W. Col. States, evening, 7965.

[fol. 1832] Q. Ford.

A. 1949: T-P, morning, 30983. T-P and States, Sunday, 63500 plus 660. Item, evening, 30606. States, evening, 20325.

1950: T-P, morning, 38616. T-P and States, Sunday, 60750 plus 5080. Item, evening, 35074. Item, Sunday, 4690. States, evening, 41985.

Q. Is there any additional Ford under Col. or A. W. or T. W.?

A. I noticed that.

Q. Hudson.

A. 1949: T-P, morning, 2977. T-P and States, Sunday, 16001. Item, evening, 328. States, evening, 2641.

1950: T-P, morning, 4991. T-P and States, Sunday, 9665. Item, evening, 5967. Item, Sunday, 3200. States, evening, 3029.

Q. Oldsmobile.

A. 1949: 12481, T-P, morning. T-P and States, Sunday, 9866. Item, evening, 4210. States, evening, 2731.

1950: T-P, morning, 2460. T-P and States, Sunday, 41545, plus 2550 T. W. Col. Item, evening, 3190. Item, Sunday, 2240 plus 3000 A. W. Col. States, evening, 2264.

[fol. 1833] Q. Plymouth.

A. 1949: T-P, morning, 8197. T-P and States, Sunday, 13833. Item, evening, 7192. States, evening, 7223.

1950: T-P, morning, 11298. T-P and States, Sunday, 14917, plus 850 T. W. Col. Item, evening, 10078. Item, Sunday, 8022 plus 2,000 A. W. Col. States, evening, 11230.

Q. Pontiac.

A. 1949: T-P, morning, 27461. T-P and States, Sunday, 3150. Item, evening, 14608. States, evening, 17284.

1950: T-P, morning, 15641. T-P and States, Sunday, 3809. Item, evening, 17667. Item, Sunday, 840. States, evening, 18867.

Q. Renault.

A. 1949: T-P, morning, 1138. T-P and States, Sunday, zero. Item, evening, 104. States, evening, 104.

1950: T-P, morning, 353. T-P and States, Sunday, 103. Item, evening, 625. Item, Sunday, 675. States, evening, 150.

Q. Chevrolet Truck.

A. 1949: T-P, morning, 2,000. T-P and States, Sunday 18249. Item, evening, 11222. States, evening, 2554.

1950: T-P, morning, 4363. T-P and States, Sunday, 17087. Item, evening, 12540. Item, Sunday, 1140. States, evening, 2802.

Q. Ford Truck.

A. 1949: T-P, morning, 16718. T-P and States, Sunday [fol. 1834] 486. Item, evening, 16247. States, evening, 16118.

1950: T-P, morning, 23665. T-P and States, Sunday, 1980. Item, evening, 13405. Item, Sunday, 1000. States, evening, 22275.

Q. Banks and Trust Companies.

A. Banks and Trusts Companies, total, 1949: 53188 for T-P, morning. T-P and States, Sunday, 2600. Item, evening, 51064. States, evening, 52759.

1950: T-P, morning, 47931. T-P and States, Sunday, 4490. Item, evening, 56894. Item, Sunday, 2750. States, evening, 48581.

Q. Stock and Bond Houses.

A. Stock and Bond Houses, total, 1949: T-P, morning, 18487. T-P and States, Sunday, 1092. Item, evening, 9951. States, evening, 18395.

1950: T-P, morning, 14297. T-P and States, Sunday, 532. Item, evening, 13258. Item, Sunday, 2155. States, evening, 14225.

Q. Would you please go back and read Emerson Television for 1950? I think that you made a mistake in that one. It's quite a ways back, Mr. Houghton.

A. Emerson Television, 1950: T-P, morning, zero. T-P and States, Sunday, 2400. Item, evening, 1200. Item, Sunday, 3000. States, evening, zero.

Mr. Kramer: No further questions.

Mr. Phelps: If the Court please, I still see no relevancy [fol. 1835] to the testimony. I have no objection to whatever counsel thinks it has. As long as it is going in I think we ought to have the accounts completed. I think there were three accounts that counsel omitted.

Without in any way approving the relevancy of the testimony, if Your Honor will permit me, I would like to ask the witness about the Mississippi Shipping Company, which was omitted.

Mr. Kramer: It was not listed in the transcript yesterday.

Mr. Phelps: The Reporter may have missed it.

Mr. Kramer: If it is not in the transcript there is no point in putting it in.

Mr. Phelps: How about Petroleum Week?

Mr. Kramer: Petroleum Week Section was in the transcript. I was unable to find it last night. If you can find it we will be glad to put it in.

Mr. Phelps: How about United Gas Pipe Line?

Mr. Kramer: It was not in the transcript.

Cross examination.

By Mr. Phelps:

Q. For the record, Mr. Houghton, what does the letter "C" mean, after the lineage figure, 1004?

A. I think that means "Comic".

Q. And "A. W. Col."?

A. I am not sure of that.

Q. Would it be "American Weekly, Color?"

A. Yes.

[fol. 1836] Q. And "T. W. Col."?

A. That is "This Week."

Q. Do you happen to know if Waste King Pulverator is a new account, not in the market in 1949?

A. I don't know anything about that.

Q. I believe you stated that you could not find Youngstown Kitchen Aider for 1950. Would you look on page 216?

A. Yes. I see it here.

Q. Would you read the figures?

A. T-P, morning, zero. T-P and States, Sunday, zero. Item, evening, zero. Item, Sunday, 2107. States evening, zero.

Q. Do you happen to know whether Trailways and Continental Trailways are the same company?

A. No, sir.

Mr. Phelps: We have no further cross examination.

Mr. Kramer: That is all, Mr. Houghton.

(Witness excused.)

Mr. Kramer: This concludes the rebuttal testimony to be offered by the Government; except for one witness, Mr. Oliver Pepper, who was not able to get here until tomorrow morning. I, therefore, beg leave of the Court to adjourn the further trial of the case, until, if I may, eleven o'clock tomorrow morning to assure his arrival on the Panama Limited. Mr. Pepper's testimony should take considerably less than one hour.

[fol. 1837] Mr. Wilson: If the Court please, in view of the fact that we know the subject matter upon which Mr. Pepper is going to testify, wouldn't it be possible to settle it today without waiting until tomorrow for Mr. Pepper to arrive here?

The Court: I don't see how.

Mr. Wilson: Very well.

Mr. Phelps: Of course, don't we know that the testimony—Has counsel reached any conclusion as to any basis on which the testimony is proper rebuttal evidence? Because if counsel has not reached any conclusion, isn't prepared to state to the Court some way in which this

testimony is proper rebuttal evidence, I personally see no reason why the case should be held open until tomorrow morning. Of course, we also know that there are a number of other objections to this line of testimony.

It seems to me, unless counsel can overcome that hurdle it is utterly useless to hold the case over until tomorrow morning to hear that testimony.

Mr. Kramer: I should be glad to address the Court on that subject if the Court thinks it is necessary in absence of the witness.

The Court: I don't think it is necessary. I don't see how anyone can be hurt by continuing the matter until tomorrow morning at eleven o'clock.

This case will be continued until tomorrow morning at eleven o'clock.

Mr. Kramer: Before we adjourn, may I inquire whether [fol. 1838] counsel and the Court think it would save time to discuss this question of arguments: the dates, now, or whether you prefer to let that go over until tomorrow?

Mr. Phelps: Whatever Your Honor wishes is satisfactory to us.

The Court: I don't see that it makes a great deal of difference. If you gentlemen are ready to discuss it now we can do so.

(Bench conference.)

Mr. Kramer: I am handing to the Clerk, Government's Exhibits "G-134" through "G-138," with changed titles, which I understand that so far as the titles are concerned, they have been agreed upon between Mr. Houghton and Mr. Wilson.

Mr. Wilson: If the Court please, if it is agreeable to Mr. Kramer, as I understand it, they expect to have their brief in in thirty days. That will make it the middle of June. May we have until the first of July?

The Court: It is understood, gentlemen, that the Government is to have its brief in in thirty days after the close of the trial, which we anticipate will be tomorrow. Is that correct?

Mr. Kramer: That is correct, Your Honor.

The Court: And then the defendants are to have until July 1st to file their brief.

Oral arguments will be had on July 12th, which is a Thursday, at ten o'clock.

(Whereupon, at 11:00 o'clock a. m., the trial was adjourned until Thursday, May 17, 1951, at 11:00 a. m.)

[fol. 1839] PROCEEDINGS

(The trial was resumed, pursuant to adjournment, on Thursday, May 17, 1951, at 11:00 o'clock a. m.)

Mr. Kramer: Mr. Pepper, please take the stand.

OLIVER PEPPER, a witness called by and on behalf of the Government on rebuttal, being first sworn, was examined and testified as follows:

Direct examination.

By Mr. Kramer:

Q. Please state your name.
A. Oliver Pepper.
Q. Where do you live, Mr. Pepper?
A. Libertyville, Illinois.
Q. By whom are you employed?
A. Standard Rate & Data Service, Inc.
Q. And where are you employed?
A. 333 North Michigan Avenue, Chicago, Illinois.
Q. And how long have you been employed by Standard Rate & Data Service?
A. Twenty-five years.
Q. Will you describe your duties there during the past, let's say, five years?
A. I have been Manager of the Rate Service Department, whose duty it is to see that the information reaching us through publishers is accurately and efficiently reported in our various services.
[fol. 1840] Q. Will you describe briefly, or exhibit if you have a copy with you, the Standard Rate & Data newspaper service publication.
A. (Producing book.)

Q. Without going into detail, just state what that volume is.

A. This is a copy of the November, 1949, issue of our Standard Rate & Data Service newspaper publication in which we report the advertising rates, the National advertising rates, of daily newspapers' rates and circulation.

Q. In the United States?

A. In the United States and Canada.

Q. Now, do I understand that you were in charge of either all or part of the job of getting out that volume?

A. So far as the production, or gathering of material and formulating it in this publication, yes.

Q. Were you requested by the Department of Justice of the United States, to make any studies of unit combination rates for newspaper advertising in the United States?

A. I was.

Q. Is it your understanding that your Standard Rate & Data Service would be paid for this work by the Government?

A. Yes.

Q. What period of years did your studies cover?

A. From 1929, using the January 1929 issue of our newspaper publication, and the January issue for each succeeding year, through 1949.

Q. What cities did this study to which you refer cover?

[fol. 1841] A. There were forty five cities. Did you say *what* cities?

Q. No. Just, do you remember, from your own knowledge, what the names of the cities were?

A. No, I do not.

Q. I hand you Government's Exhibit for identification 153, and ask you to tell me, if you can, what that document is.

A. This is a list of forty-five cities that we were asked to review, and it shows the newspapers which existed in 1929, using our January 1929 issue as the basis of determination, and indicates the papers in those forty five cities, and also whether the advertising was sold on a unit rate basis or whether they were published and advertising sold separately in the editions of the newspapers.

(The document referred to was marked "G-153," for identification.)

Q. Did that study, that you have just described briefly, include Sunday papers as well as daily papers, or was it restricted to either one?

A. This was restricted to daily newspapers. Sunday newspapers or commercial dailies were not included.

Q. And was it based on anything other than data furnished to Standard Rate & Data Service?

A. No, sir.

Q. Using Government's Exhibit for identification, "G-153," will you please state whether or not it shows the cities in which daily morning or evening newspapers went out of business or suspended daily publication at a time when other newspapers published in those same cities had
fol. 1842 in effect a unit combination advertising rate?

A. Yes, sir; it will.

Q. Will you please state the cities in which that occurred, according to "G-153", and in each case name the newspapers having the unit rate, the name of the paper that ceased publication, and the date that it ceased publication.

Mr. Wilson: If the Court please, we object to the testimony that is sought to be elicited from this witness, first because it goes beyond the scope of the pleadings in this case and the issues raised thereby; second, because it goes beyond the scope of the issues as fixed at the pre-trial conferences; third because it goes beyond the scope of proper rebuttal evidence, and it opens up an issue which was never opened by the defendants in testimony offered in defense of their case; and, fourth, because the testimony is incompetent, irrelevant, and immaterial, does not tend to prove or disprove any issue in this lawsuit.

Mr. Kramer: Does Your Honor wish to hear from me?

The Court: If you wish to be heard.

Mr. Kramer: I would like to address myself first, if the Court please, to the issue of whether or not this testimony is improper rebuttal as distinguished from the other points that Mr. Wilson raised:

I think in approaching this problem of evidence you have

to commence with Rule 43(b) which, of course as Your Honor knows, provides that:

> "A party may call an adverse party and interrogate him by leading questions and contradict and impeach [fol. 1843] him in all respects as if he had been called by the adverse party, and the witness thus called may be contradicted and impeached by or on behalf of the adverse party also, and may be cross examined by the adverse party only upon the subject matter of his examination in chief."

This testimony, according to the Government's view, is designed to rebut testimony given by the defendant and witness John F. Tims, Jr., in the course of what the Reporter has labeled his "Direct Examination" by Mr. James Wilson, which followed our cross examination.

At that time, commencing on page 624, Mr. Wilson commenced interrogating Mr. Tims with respect to the unit rate in other cities in the United States at the time that he had adopted—by "he," I mean The Times-Picayune Publishing Company—a unit rate in New Orleans.

Now, if we may stop and consider a moment the position that that placed the Government in at that stage: Here is the Government contending that the issue is irrelevant. We had asked the witness Tims no question concerning it on our examination, to the best of my review of the record. We had a standing objection, at that time, to all such questions. Mr. Wilson then examines this witness, on direct examination, following our cross examination, and goes into this subject. It would seem to me that if we are to rebut this testimony by Mr. Tims at all, the appropriate time to rebut it would be in our rebuttal because the Government has consistently contended that these questions asked Mr. Tims by Mr. Wilson are irrelevant and, therefore, could not possibly [fol. 1844] form any part of the Government's case in chief.

Now, as to the argument relating to the scope of the pleadings, if I properly understood the argument——

The Court: Before you get onto that:

What does this rebut? Do you intend to show by this

evidence that unit rate was not in effect in other cities as was claimed by the witness Tims?

Mr. Kramer: No. I should be glad to describe what I think this evidence will show.

The Court: I would like to know what you intend to rebut. What, particularly, is this evidence intended to rebut the evidence of Mr. Tims?

Mr. Kramer: This evidence is designed to show that in several cities having the unit rate concerning which Mr. Tims testified, other newspapers, each of some of those same cities, went out of business or suspended daily publication. Secondly, (this is the portion I haven't yet arrived at with the witness) a second study was made to determine whether or not there are competing papers now in existence in any of the communities other than in New Orleans having unit rates, and, if so, how many. In other words, the second part is designed to show that the circumstances were not similar to those in New Orleans. Therefore, I think that it falls within the rule which, I take it, we all agree on but I happened to find this case which stated it very well, decided by the Fifth Circuit last year: *Maguire* v. *Federal Crop Insurance Corporation*, 181 F. 2d 320, at 322:

[fol. 1845] "Evidence in rebuttal is admissible to repel, explain, disprove or contradict facts given in evidence by the adverse part."

I take it that is the rule we all agree on.

It seems to me that this testimony tends to explain and to repel the weight and the relevance of the testimony which has been admitted on the direct examination of the witness Tims by his counsel following our cross-examination.

I started to discuss the scope of the pleading issue. If I properly understand that argument, as I recall, (my recollection I think is accurate) there was some mention made in the Answer of the fact that other newspapers had this unit rate and that it was a long-established trade practice. So that, perhaps, I didn't understand that argument. If I understand it, I don't think that one is valid.

Now, as to the incompetency, it is certainly competent

because the parties have stipulated that the Standard Rate & Data is authentic. As to the relevancy, it seems to me that after this evidence has been heard the Court may conclude it isn't worth very much. If Your Honor were interested—and I don't see why he should be at this time—in my views as to what it proves, I would be glad to state them after it has been elicited. It may not be too important,—I don't know—but the issue is important and the Government thinks, in all fairness, if we are to hear what the situation was in 1949, at the time this unit rate on General Advertising was adopted in other cities, we ought to have at least a little more than what is now in evidence as to the picture.

[fol. 1846] Unless the Court has further questions of me, I think that is all.

Mr. Wilson: May I be heard?

If the Court please, the testimony at page 624 of the record, which Mr. Kramer referred to, were questions as to what knowledge Mr. Tims had in regard to the unit rates at the time that he put the rates in. Now, I must appeal to the record on this point because I can only depend upon my own memory. My memory is that in the examination, which has been styled, the original cross-examination of Mr. Tims, that during that counsel for the Government asked a question which brought out the very fact that between 150 and 200 newspapers had the unit rate at the time. And my questions were asked, in cross examination on that very thing. Now, the fact that this is styled in the record "Cross Examination" and "Direct Examination" is hardly an accurate label of it. All that Rule 43(b) does is allow the Government to put a witness on as part of their case in chief and offering direct testimony through him, but it provides the manner in which the questions may be asked: namely, you may ask them leading questions and suggestive questions and you may cross examine him in the usual form, but the evidence so elicited is direct evidence, and a direct part of the Government's case. If they choose to impeach him after they have put him on the stand they may have offered direct evidence and then made a nullity of it, but it does not keep it from being their own direct evidence.

When I stood up to examine Mr. Tims I had the right to

cross examine Mr. Tims and that was cross examination, even though the Reporter has styled it "Direct Examination."

[fol. 1847] In the same connection, the Government brought out, also, through the witness Kelley, this very fact of how many papers had the unit rate. It was also brought out through the witness Donovan, who stated that there were 188 newspapers that had the unit rate. So I can't possibly see how the Government can come in and say that they are entitled to rebut their own evidence. The rule which Mr. Kramer read about the adverse party having the right to examine: when it said "adverse party" that meant the defendants in this case had the right to cross examine and to rebut evidence that they elicited by means of cross examination from a defendant. Furthermore, the case he referred to: I have no quarrel with that rule. All it says is that you can rebut the evidence offered by the adverse party and that meant the evidence offered by us, and not the evidence offered by the Government through an adverse witness.

So, for that reason, I cannot possibly see how this could be proper rebuttal evidence, and there is no claim, I take it, that there was any evidence offered by the defendants here as part of their case that this could be rebuttal to. As I understand it, they only want to rebut evidence that went in as part of their own direct case.

On the matter of the scope of the pleadings and the scope of the issues, as I understood it that was settled in the pre-trial conferences, and I understood that we were not going to try the situation in cities other than New Orleans. The evidence here has been that in 1950 the Item had the best year it has ever had. It is very unfortunate if some place else some newspaper may have fallen upon adverse circumstances and found itself unable to continue, or what [fol. 1848] ever this evidence might show; but I don't see how it would be possible, at this stage of the case, for the defendants to assemble evidence that would enable us to make a clear showing to this Court as to what happened in forty-five other cities.

For that reason, I strongly urge the objection which we

have made. I do not think it should be a part of the record in this case.

The Court: Well, I think that technically it may very well be true that this is not rebuttal testimony in a strict sense. However, as I understand the situation it is in evidence that Mr. Tims—at least the officers of The Times-Picayune Publishing Company—at the time the unit rate was put into effect, was aware of the fact that the unit rate had been put into effect in a large number of other cities.

Now, I take it that the Government is attempting to show now that if the officers of the Company knew of the existence of the unit rate in other cities that they knew of other circumstances, conditions, which obtained in those other cities at the time. I think it is simply a question of showing that knowledge that this testimony is being offered.

I suppose that the Government will eventually ask the Court to infer from the existence of those circumstances knowledge on the part of the officers of the Times-Picayune, and then to infer from that the reason they instituted the unit system here was for the purpose of carrying or effecting a monopoly.

So it seems to me, eventually, the Government will be trying to put an inference on an inference.

Be that as it may, I think that the evidence should be admitted for whatever it is worth, even though it may not be [fol. 1849] strictly rebuttal testimony.

Mr. Phelps: Will the Court hear me a moment?

The Court: Yes.

Mr. Phelps: I would like to have it clearly understood, in line with Your Honor's ruling, that the evidence goes strictly to the matter of the intent of the defendant and its officers, because as I appreciate it, the Government's real purpose in this testimony is to try to show the effect of the unit rate in other communities: the effect of the unit rate is wholly outside the scope of the pleadings, wholly outside any testimony elicited when the Government was presenting its case, or when the defendants were presenting their case.

If we are to go into the effect of the unit rate in other communities, as Your Honor pointed out in an early pre-

trial conference, we will be trying 180 lawsuits instead of simply trying one lawsuit. I would appreciate, if Your Honor agrees with me, if you would make a definite ruling that this testimony is being admitted solely for the purpose of showing that the defendant Tims told an untruth when he said that he had no knowledge of the effect of the unit rate in other communities.

The Court: Do you wish to be heard on that?

Mr. Kramer: On Mr. Phelps' remark? Yes. But before I do, I would like to say just one brief thing, because at some later date it may help the Court if I do now, on the record.

The only reference we could find—we are tired and might have missed one; I doubt it—the only reference we could find on this subject of Mr. Tims' examination by the Gov- [fol. 1850] ernment when he was first called was the reference on page 328. Mr. Flurry was examining Mr. Tims, and the following occurred:

"By Mr. Flurry:

Q. It simply means if you take it in one paper you must take it in both.

A. That is right. The morning and evening or the evening and morning.

The Court: Let's call it the unit rate, so no one will be offended.

A. You buy it in Kansas City where your live. You should know."

There is an answer in response to no question, Your Honor.

"Mr. Flurry: I am aware of that.

"Mr. Kramer:" (making a track) "Painfully aware of it."

That is the only reference we could find in the Tims examination by Mr. Flurry to this question.

However, I wish to direct myself to Mr. Phelps' remark: It seems to me that honesty and frankness compel me to say if this testimony was elicited by the defendants solely for showing intent of Mr. Tims, I suppose the only proper

use the Government could make of it would be to show the intent of the defendants. Therefore, he is right that we cannot, and do not propose to sit here today and try to find out what happened in each of either 190 cities or these forty-five.

[fol. 1851] Whatever extent that saves the defendants' efforts I offer it in good faith.

Mr. Wilson: Well, may I assume from that that Mr. Kramer will respect that position if we should reach some other court?

Mr. Kramer: Your Honor, with mild resentment my answer is that I always respect my obligations to the best of my ability.

Mr. Phelps: If the Court pleases, as long as we have gone into this at this length as to what is in the record, it is my firm recollection that the Government witness, Vincent Kelley, was asked point blank about the circumstances in other cities, and so testified.

That was the first witness in the case, I believe.

Mr. Kramer: Again, I would like to say, in response to that,—That, I also must answer, Your Honor:

On page 98, Mr. Kramer examining Mr. Kelley:

> "Q. When did you first learn that officials of the Times-Picayune Publishing Company planned to institute a forced combination rate for general advertising?
>
> A. Well, that is a hard one to answer, because that subject had been discussed over the years, rates, and other papers have been doing this——
>
> Mr. Kramer: Excuse me, Your Honor, I don't think that is responsive to the question. It is solely when did he learn they were going to adopt it."

That was the first time in Mr. Kelley's testimony that the question came up.

[fol. 1852] However, we are not offering it to rebut anything Mr. Kelley said, in any event. It is Mr. Tims'——

The Court: Let's get on.

Mr. Kramer: I don't suppose, Mr. Reporter, that you could find the last question?

The Reporter: I think I could.

(The Reporter read the last question as follows:

"Will you please state the cities in which that occurred, according to "G-153," and in each case name the newspapers having the unit rate, the name of the paper that ceased publication and the date that it ceased publication."

[fol. 1853] Q. Did you understand the question?

A. I can determine that from this report.

Q. Will you speak up a little louder?

A. I can determine that from this report.

In Phoenix, Arizona, the Arizona State Democrat started publication of the Daily in 1931 and suspended publication November 26, 1931.

The Court: Started when?

A. Started publication in 1931. I didn't have the exact date on that.

By Mr. Kramer:

Q. Speak a little louder, please.

A. Started in 1931 and I didn't have an exact date as to when it started. It suspended publication November 26, 1951. At that time, the Phoenix Republican Gazette had a unit rate.

Q. Proceed, sir.

The Court: Just a minute. The Phoenix Republican Gazette had a unit rate when the new paper started?

A. When they terminated.

The Court: All right.

A. Santa Rosa, California. The Independent, about December, 1939, ceased publication as a daily and went into the weekly field. At that time, the Santa Rosa Press Democrat and Republican had a unit rate.

The Bridgeport, Connecticut, Times Star ceased publication November 25, 1941 and at that time the Bridgeport [fol. 1854] Post and Telegram had a unit rate.

The Court: Do you know when any of these papers commenced publication? Do you know anything about them?

A. No. In making this compilation of the forty-five cities, I took the January, 1929 issue of Standard Rate and Data Service Newspaper Publication and went through it

and set up these newspapers in those forty-five cities at that time and then brought the information down through 1949.

Mr. Wilson: If the Court please, before we proceed, is it my understanding that this is an exhibit that the Government proposes to put in evidence?

Mr. Kramer: Yes.

Mr. Wilson: And that the information that he is testifying to now is taken from the exhibit?

Mr. Kramer: And that he prepared the exhibit.

Mr. Wilson: But what I am unable to ascertain from having the exhibit before me is how he knows what he is testifying to from this exhibit.

I understand that the latter part of it shows the fact that a paper either merged or went out of business or did something in, say, 1951. He has a front part of the exhibit which shows what the situation was in 1929.

What I am unable to tell from the exhibit is how he knows in 1941 what the situation was.

By Mr. Kramer:

[fol. 1855] Q. Would you explain how you know from this exhibit?

A. In making up this compilation here, these (indicating) are the basic cities and the condition that existed in January, 1929. These sheets here (indicating) are described as a summary of changes to the basic list.

The Court: Well now, you mean in each case, except where you say otherwise, the paper was in existence in 1929? The paper which subsequently went out of business?

You mentioned a Phoenix paper which commenced in 1931.

A. No. This is a condition of changes from 1929 through 1949. There may be papers that have started publication between 1929 and 1949 that are still in existence or that may have ceased publication.

By Mr. Kramer:

Q. And, if so, would appear on G-153.

A. But, on this summary of changes, it would appear there.

Mr. Wilson: Might I suggest that the exhibit be put in evidence so that we may all follow it. Then, if the witness has additional testimony to add to what is on the exhibit, well and good. If not, the exhibit speaks for itself.

Mr. Kramer: If the Court please, I am perfectly agreeable to that, but, if the Court will let me read part of the exhibit——

Mr. Wilson: He may read it all as far as the Defendants are concerned.

Mr. Kramer: This is a list of forty-five cities, twenty-one of which had newspapers that went out of business at the [fol. 1856] time another newspaper in the same city had a unit rate.

The Court: It is more than that, because Santa Rosa changed from a daily to a weekly.

Mr. Kramer: You are right, Your Honor, or suspended daily publication.

Mr. Wilson: I believe Mr. Kramer's statement is a little too broad, because I don't discover that to be so on each of these, from my examination of the exhibit; but, in my examination of the exhibit, it does not indicate that at the time in everyone of these cities that that is what happened: that there was a unit rate and a paper suspended publication at that time.

Mr. Wilson: If Mr. Wilson means: In each of the forty-five there was a suspension, it does not.

This is a list of forty-five cities in which some newspapers went out of business and some didn't, and I am merely trying to have him read those that did.

Mr. Wilson, I might add I have——

The Court: If some did and some did not go out of business, what purpose does the list serve?

Mr. Kramer: The list is designed to show the papers that did go out of business. I am perfectly willing to select just those twenty-one cities and limit the exhibit to that.

The Court: Let it all go in.

Mr. Kramer: I beg pardon?

The Court: I say: Let it all go in.

[fol. 1857] Mr. Wilson: I don't understand that this witness is testifying that he selected the forty-five cities.

Mr. Kramer: No. I will gladly state how he selected them in a minute.

I do think the whole picture will become clear, if we go over this list.

By Mr. Kramer:

Q. What was the next city that you have there, in answer to the question?

A. Was Santa Rosa read?

Q. Yes. You were at Bridgeport, sir, I think.

A. Bridgeport was read, also.

The Court: No.

A. The Bridgeport Times Star ceased publication of a daily November 25, 1941. At that time, the Bridgeport Post and Telegram sold advertising on a unit rate basis.

The Waterbury, Connecticut, Democrat discontinued publication as a daily edition December 28, 1946; and, at that time, the Republican, the Waterbury Republican and American had a unit rate.

The Daytona Beach, Florida, Sun Record ceased publication of the daily October 31, 1941.

The Court: Now, since you have not stated when these papers commenced publication, I take it that they were being published in 1929 and prior?

A. No. Some of them may have come into the picture in [fol. 1858] the meantime.

The Court: You mean, after 1929?

A. After 1929.

The Court: Why did you give the commencement date of the publication in the Phoenix paper and not the rest of them? You say the Phoenix paper commenced publication in 1931 and suspended on November 26, 1931.

A. That is true and that will be borne out in each of these other situations here.

Going back to the Santa Rosa situation, I have a complete story here that the Indépendent was a weekly newspaper which began publication on a daily basis about June, 1939.

Now, if anything had happened to that and it ceased publication in '41 or '42 or '45, it would have been followed up in the record: that it ceased publication and, of course, I

would have read from that; but going back, it could be determined from this report whether the Independent started subsequent to 1929.

Mr. Wilson: Check your record. Doesn't it show that it did start in June, 1939 and ended in December, 1939? That is what my copy shows.

A. Yes. Santa Rosa here. It started in June, 1939 and ceased——

The Court: It changed from a daily to a weekly in December, 1939.

A. It was a weekly and then began publication on a daily [fol. 1859] basis about June, 1939, and about December, 1939, it ceased; so, it would not have appeared on this basic list at all.

The Court: When they started publication, the other paper already had the joint unit rate?

Mr. Kramer: That is right, and it lasted six months.

The Court: All right.

By Mr. Kramer:

Q. Proceed, sir.

A. Columbus, Georgia, News-Record ceased publication as a daily May 10, 1938.

Mr. Wilson: Does that appear on your exhibit?

A. Yes.

By Mr. Kramer:

Q. At that time, was there a paper in Columbus, Georgia, that had a unit rate in effect?

A. Yes. In 1920, the Enquirer-Sun and Ledger established a unit rate.

Q. Proceed, sir.

A. When we made the up-to-1929 compilation, the advertising space in the morning Enquirer-Sun was sold separately and advertising space in the Ledger, evening newspaper, was sold separately; but then, in 1930, the unit rate was established.

Mr. Wilson: If the Court please, may I renew my objection to the witness reading from this exhibit until it is

offered in evidence? He is not reading the complete information from it.

[fol. 1860] I think the Court should have the exhibit before him so that he can see that there are many other factors shown on his own exhibit which would be very helpful.

The Court: When did the Ledger commence publication?

A. That was in existence in 1929.

Mr. Kramer: Sometime before '29.

The Court: Proceed.

What is the objection to introducing this exhibit?

Mr. Kramer: I have no objection to putting it in evidence and reading it, Your Honor. I really thought this would save time. I am also quite willing, if the Court please, to let it go in without explanation. It speaks for itself. It is quite clear. Unfortunately, Mr. Pepper got here without giving me enough time to have a copy made for the Court.

The Court: Offer it, but go on and read it. You can go on and question him about it, but let it be a little more specific, at least a little more in detail.

Mr. Kramer: Then, I will ask him specific questions and I think it will be a lot quicker.

By Mr. Kramer:

Q. Calling your attention to Louisville, Kentucky, Mr. Pepper, I will ask you whether or not the Herald-Post, an evening paper, ceased publication on October 30, 1936.

A. Yes. It did.

Q. At that time, did the Louisville Courier-Journal and Times have a unit combination advertising rate in effect?

[fol. 1861] A. They did.

Q. Calling your attention to Portland, Maine, Mr. Pepper, I will ask you whether or not the evening News ceased publication there as a daily on May 18, 1938.

A. It did.

Q. At that time, state whether or not the Portland Evening Express and Press Herald had a unit combination advertising rate in effect?

A. They did.

Q. Calling your attention to Boston, Massachusetts, I will ask you whether or not the Boston Transcript discon-

tinued publishing a regular newspaper on April 30, 1941 in that community.

A. It did.

Q. At that time, were there other newspapers in Boston which had in effect a unit combination advertising rate?

A. There was.

Q. Now, to give the complete picture on Boston, is it not also true that there still exists in Boston a newspaper which publishes only a morning edition and competes with two newspapers that have a unit rate in effect?

A. I believe that is true. May I review the November, 1949, book, which is probably the last one I have here?

Q. You may.

A. The Boston, Massachusetts Globe is published, morning and evening, and advertising is sold on a unit rate basis.

[fol. 1862] Q. How about the Herald & Traveler?

A. The Herald & Traveler is published morning and evening and advertising is sold on a unit rate basis.

The Boston Post is published, morning, and advertising space is sold in the morning edition, separately.

In the Record and American, morning and evening newspapers, advertising is sold on a combination or unit basis.

That is all.

Q. Does that complete your examination of Boston?

A. Yes.

Q. Calling your attention to Worcester, Massachusetts, I will ask you whether or not the Post ceased publication as a separate newspaper on October 1, 1938.

A. It did that.

Q. And at that time, did the Worcester Telegram Gazette have a unit combination advertising rate in effect?

The Court: What date was that?

Mr. Kramer: October 1, 1938.

A. They did.

By Mr. Kramer:

Q. And what happened to the Post? Will you read what you have found there under Worcester.

A. The Post was acquired by the Telegram Gazette and the title "Post" incorporated in the name of the evening

Gazette, which was then published as the Gazette and Post, evening, and the Telegram, morning. Advertising space [fol. 1863] in the weekday editions were sold in combination, only.

Q. Calling your attention to Kansas City, Missouri, I will ask you whether or not the paper, the Journal-Post, ceased publication in that city on March 31, 1942.

A. The Journal-Post: The name of it had been changed to Journal in 1938 and then the Journal suspended publication March 31, 1942. At that time, the Kansas City Times-Star sold advertising on a unit rate basis.

Q. Now, I call——

The Court: Just a minute.

Mr. Kramer: Excuse me.

The Court: When did they start? Do you know when the Kansas City Times-Star started the unit rate?

A. It was in effect in 1929.

By Mr. Kramer:

Q. Your study did not precede any year back of 1929?

A. That is right.

The Court: You mean, the Kansas City Star and what?

A. Star-Times.

The Court: It is an afternoon and morning paper?

A. That is right, sir.

The Court: They have had the unit rate in effect since 1929, or earlier?

Mr. Wilson: Since 1903, if Your Honor wants the exact date.

[fol. 1864] By Mr. Kramer:

Q. I call your attention to Oklahoma City and I will ask you whether or not the Beacon of Capitol Hill commenced publication in that city on March 5, 1934.

A. It did.

Q. And it was a morning paper, only? Is that right?

A. Yes.

Q. And did it cease publication as a daily paper on August 13, 1936?

A. It did.

Q. And did the——

The Court: What town was that?

Mr. Kramer: Oklahoma City.

By Mr. Kramer:

Q. Did the Oklahoman & Times at that time have a unit combination rate in effect?

A. They did.

Q. Now, I will ask you whether or not the News, evening News, in Oklahoma City ceased publication on February 24, 1939, in Oklahoma City.

A. It did.

Q. At that time, was the Oklahoman and Times unit rate still in effect?

A. It was.

Q. I call your attention to Harrisburg, Pennsylvania, and [fol. 1865] I will ask you whether or not the Harrisburg Telegraph was discontinued on March 27, 1948.

A. It was.

Q. At that time, did any other paper in that community have a combination rate in effect?

A. The Harrisburg, Pennsylvania, News & Patriot had a unit rate.

Q. I call your attention to Johnson City, Tennessee and ask you whether or not the Johnson City Times discontinued the publication in that city on September 25, 1944.

A. It did.

Q. When did it commence publication?

A. September 8, 1940. That was the first daily issue.

Q. Now, at that time—and that is, on September 25, 1944—did the Johnson City Chronicle and Staff-News have a unit combination advertising rate in effect?

A. They did.

Q. Calling your attention to the City of Austin in the State of Texas——

The Court: What is it?

Mr. Kramer: Austin, Texas.

Q. I will ask you whether or not the American-Statesman had a combination rate in effect on December 29, 1942.

A. They did.

Q. On that date, did the Austin Tribune, and evening [fol. 1866] paper, cease publication?

A. Ceased publication on December 29, 1942.

Q. Calling your attention to Corpus Christi, Texas, I will ask you whether or not the Corpus Christi Chronicle discontinued publication in January, 1947.

A. It did.

Q. What were the papers, if any, at that time in Corpus Christi which had a unit combination rate?

A. The Corpus Christi Caller and Times.

Q. Calling your attention to Wichita Falls——

The Court: When did the Chronicle commence publication?

A. Pardon?

The Court: When did the Corpus Christi Chronicle commence publication.

A. It began publication under the name of the Voice in January, January 23, 1937; and, in June, 1938, the name was changed to Chronicle and Voice. Then, in November, 1939, the name Chronicle and Voice was changed to Chronicle and it ceased publication under the title of Chronicle.

By Mr. Kramer:

Q. Calling your attention to Wichita Falls, I will ask you whether or not the Post ceased publication as a daily newspaper in that city on September 18, 1938.

A. It did.

[fol. 1867] Q. At that time, did the Record-News & Times have a unit combination rate in effect?

A. They did.

Q. Calling your attention to the City of Spokane, Washington, I will ask you whether or not the Spokane Press ceased publication in that city as a daily on March 18, 1939.

A. It did.

Q. At that time, did the Spokane Chronicle and Spokesman-Review have a unit combination advertising rate in effect?

A. They did.

Q. Calling your attention to the City of, or town of Beckley, West Virginia, I will ask you whether or not in

1929 any newspaper had a unit combination rate in effect in that city.

The Court: Did you say, Beckley?

Mr. Kramer: B-e-c-k-l-e-y.

A. Yes. The Beckley Herald or Beckley Post Herald and Register, morning and evening newspapers, were merged and advertising space in the weekday edition sold only in combination.

Q. Now, at the time subsequent to the commencement of the unit rate and while the unit rate was still in effect for the Post Herald and Register, did the Beckley News—Was the Beckley News founded?

A. No.

Q. When was the first issue of the Beckley News?

A. January 13, 1946.

Q. And when did it cease publication?

[fol. 1868] A. March 16, 1947.

Q. And at that time, did the Post Herald and Register have a unit rate in effect?

A. It did.

The Court: Do you know what their circulation was?

Mr. Kramer: We can give you that, Your Honor.

The Court: I would like to know what the circulation was of this paper.

Mr. Kramer: Very small.

The Court: Chanees are, they couldn't support two papers. See what the circulation is.

A. I don't have that.

Mr. Kramer: We don't have the circulation for '47. We have it for '49.

A. Of course, the Beckley News would not be in here in '49. It ceased publication in 1947.

Mr. Kramer: I know; but let's give His Honor the best information we have.

By Mr. Kramer:

Q. What was the circulation of the Post Herald and Register in 1949? It is a very small town.

Mr. Wilson: The population is in there.

A. The corporate limits population, based on a special Government census of April 5, 1946, was 17,498.

Q. What was the circulation of the newspaper?

[fol. 1869] A. In the established city zone area, the population was 25,793 and the circulation to which the unit rate applied was 34,269.

Q. Thank you.

The Court: The circulation was 34,000?

A. 34,269 for the unit, the morning and evening editions of the Post Herald and Register.

The Court: They had a larger circulation than the population.

A. In the city zone area, oh, yes.

By Mr. Kramer:

Q. State what the city zone population is.

A. 25,793.

Q. State what the retail trading zone area population was?

A. 208,527.

Q. Thank you.

Now, Mr. Pepper, did you make any other studies for the Department of Justice in addition to G-153?

A. I did.

Q. I hand you G-154 for identification and ask you to tell me what it is, if you know.

(The document referred to was marked "G-154" for identification.)

(Document handed to the witness.)

A. This Exhibit G-154 shows the basic list which is described as a Basic List of Newspaper Cities having Pub-[fol. 1870] lications or Newspapers in which Advertising was Sold on a Unit Rate Basis and is about 175 or 176 of these cities. Then, it also goes on to show that, in addition to that combination arrangement, there were also, in some of these cities, a newspaper published, evening only, or a newspaper published, morning only.

Q. Now, did you prepare that list? Or was it prepared under your supervision?

A. I prepared it.

Q. Do I understand that it covers the situation existing on a certain day or month?

A. It was taken from the November 1, 1949 issue of——

Q. Do I understand that it is confined only to daily newspapers?

A. Yes, not including Sundays or commercial dailies, and then there are some situations here—For example, Washington, District of Columbia——

Mr. Wilson: Before he starts testifying to the exhibit, I would like the record to show that we object to any testimony from this exhibit on the same grounds that we objected to testimony from the previous exhibit; namely, that it is outside the scope of the pleadings; it is outside of the scope of the issues at the pretrial conferences; it is outside of the scope of proper rebuttal testimony; and the testimony is incompetent, irrelevant and immaterial.

Mr. Kramer: If the Court please, this is the whole picture that has been spoken of throughout the trial. This is the situation existing concerning which Mr. Tinis testified. The [fol. 1871] sole purpose of this exhibit is to show the extent of the circumstances which existed; and, if Your Honor will bear with me for a few more questions, I think the sole purpose of the exhibit——

The Court: Do I understand that in each of these cities there are two newspapers which had the unit rate and, in addition thereto, another newspaper?

Mr. Kramer: No, Your Honor.

The Court: That is what I thought he just got through saying.

Mr. Kramer: May I ask the witness, rather than testifying about it? He prepared it.

The Court: Yes.

By Mr. Kramer:

Q. Mr. Pepper, do I understand that this list is a list of cities in which in November, 1949, newspapers published in those cities, daily, had in effect a unit combinaton general advertising rate?

A. That is right.

Q. Now, in addition, I notice that there are four or five asterisks after four or five cities.

Will you state what those asterisks represent?

A. In the case of Los Angeles there is an——

The Court: The asterisks on my list are in front of the city.

A. In front of it.

The Court: Just a minute. There is an interruption.

[fol. 1872] (Off the record.)

The Court: Proceed.

By Mr. Kramer:

Q. Mr. Pepper, my question to you was to state in each case what the asterisk before the name in various cities on G-154 represents.

A. There are some four or five newspapers in the country that are described as daily, and I put that word in quotations, because they are the newspapers that are published, around the clock, and in the various editions there is no change in the editorial feature, nor is there any information on the ears of the newspaper to describe it as a sunrise or sunset or noontime edition. That is a daily or around-the-clock publication and there are only four or five of those. All the rest are morning or evening combination.

The Court: You mean: There is nothing on each issue to distinguish it from another?

A. The news matter, according to the ABC—These are ABC members in each case and the ABC provides—That rule provides that there shall be nothing to describe one edition from the next edition, except the news matter and information of that type, the advertising, and so forth, being carried through.

By Mr. Kramer:

Q. But, with the exception of those marked with an asterisk, of which you state there are four or five, all the others are morning and evening combinations? Is that correct, sir?

A. That is right, sir.

[fol. 1873] Q. And each of them, according to the record of Standard Rate and Data of November, 1949, had a unit-combination advertising rate for general advertising in effect? Is that correct?

A. That is right, sir.

Q. Do you know how many cities there are on this list, G-154?

A. 175 or 176.

Q. Does that include the four or five that have the asterisks?

A. That includes the four or five with the asterisks.

The Court: Go to New Jersey, Atlantic City. What does the "X" mean?

Mr. Kramer: I was just going to ask him that.

By Mr. Kramer:

Q. Describe to the Court what each of the "X's" means.

A. The "X" under the heading "morning, only" or an "X" under the "evening, only" would indicate that there is a morning or evening newspaper in which general advertising is sold separately, not in combination in a city where there is a unit-rate newspaper.

Q. Now, Mr. Pepper, calling your attention to Birmingham, Alabama. As of November, 1949, do I understand that, in addition to the morning and evening combination newspaper group in that city, there was another paper in that city that published evening, only?

A. There was.

Q. Was there another paper in existence in Mobile at that time?

A. There was not.

Q. Montgomery?

[fol. 1874] A. No, sir.

Q. Phoenix?

A. No, sir.

Q. Prescott?

A. No, sir.

Q. Tucson?

A. No, sir.

Q. And your answer would be the same for each of them until you get to the next "X"? Is that right?

A. That is right.

Q. Which is San Diego?

A. That is right.

Q. In November, 1949, in addition to the newspaper having a unit combination rate in effect, was there another paper in that city which published evening, only?

A. There was.

The Court: Are you talking about San Diego?

Mr. Kramer: San Diego.

By Mr. Kramer:

Q. How about San Jose?

A. There was.

Q. Do I understand that in November, 1949, there was no newspaper published in Pueblo, other than one having a unit combination rate, morning and evening?

A. That is right.

[fol. 1875] Q. And the same is true as to Bridgeport?

A. Right.

Q. Meriden?

A. Right.

Q. Norwich?

A. Right.

Q. Waterbury?

A. Right.

Q. Wilmington?

A. Who?

Q. Wilmington?

A. Right. Wilmington, Delaware.

Q. Daytona Beach?

A. Right.

Q. And so on. Now, we come to Indianapolis. In that community in November, 1949, was there a paper published in the evening in addition to the papers having the morning and evening combination rate in effect?

A. That is right.

Q. Now we come to Maysville, Kentucky. Will you consult Standard Rate and Data which is before you and tell us the population of Maysville, Kentucky, please.

A. The population of Maysville, based on the 1940 Government census, was 6572.

Q. Thank you.

[fol. 1876] A. Do you want me to go on with any other detail?

Q. No, not if that is the population. That is all I wanted.

All right. Now, Mr. Pepper, will you count up and tell us, out of the 170-odd newspaper combinations on G-154, in how many cities were there on November 1, 1949, other newspapers in existence in those cities.

A. Thirteen.

Q. Thank you, sir.

And is this list, G-154, to the best of your records, that is, by you—I mean, Standard Rate and Data records, a complete list of towns having in November, 1949, a unit rate for general advertising in the morning and evening newspapers in those cities?

A. Well, I vouch for it being 95 per cent correct. I may have missed one or two.

Q. Thank you.

The Court: Did you make a study of how many papers which had the unit rate in effect suspended publication during that period?

A. That will show up in this other exhibit, in that we have this particular basic list that existed in 1929 which took care of those unit rate situations. Then, as we go along and progress in the analysis here, it will show what may have happened to the Union and Tribune at San Diego, if anything did happen to it, during that twenty-year period.

Mr. Kramer: If the Court please, so that there will be no misunderstanding, this list covers all of the cities he could find. The other list covers only forty-five cities; so they are not comparable; but, as to forty-five, you would [fol. 1877] have the answer to your question, but not——

The Court: If any newspapers with the unit rate did suspend, then it is included in that forty-five.

Mr. Phelps: That isn't true, either, is it? It doesn't show the New Orleans Item Tribune.

Mr. Kramer: New Orleans is not one of the forty-five cities on the list.

By Mr. Kramer:

Q. Now, you were asked where you got the list of forty-five cities.

A. We received that list from the Justice Department.

Q. When did they send that list to you?

A. In a letter dated May 6th, which I received at the office on May 7th.

Q. 1951?

A. 1951.

Mr. Kramer: Excuse me a second.

I offer Government's Exhibits 153 and 154 in evidence.

Mr. Wilson: If the Court please, I object to the two exhibits for the same reasons that I have stated in my objection to the testimony of the witness from those exhibits.

The Court: I overrule the objection. They will be admitted.

(The documents marked "G-153" and "G-154" for identification were received in evidence.)

[fol. 1878] The Court: Let me ask you this: Am I to understand that there were forty-five cities in which the newspaper was suspended?

Mr. Kramer: It was my understand—I would like to answer that.

A week ago last Sunday, I examined appropriate records to determine what newspapers went out of business from 1929 to 1949, in which at the time there was more than one newspaper in the community. I was able to find forty-five such cities.

I then sent the list to Standard Rate and Data and asked them to find out whether or not at the time the paper suspended publication in these forty-five cities there was a unit rate in effect. The answer is that, out of the forty-five, twenty-one had a unit rate in effect.

The Court: Out of forty-five, twenty-one of the cities in which there was a newspaper with the newspapers with the unit rate——

Mr. Kramer: No, Your Honor. There were forty-five newspapers that went out of business, forty-five daily newspapers that went out of business.

The Court: Don't you think you had better ask the witness that.

Mr. Kramer: He can't answer that.

The Court: Doesn't his list contain forty-five cities?

Mr. Kramer: Yes, but those forty-five cities the Government selected. He didn't.

The Court: I understand.

[fol. 1879] By Mr. Kramer:

Q. Now, in those forty-five cities, looking at "G-143", (handing document to witness), will you state to the Court in how many of the forty-five cities on that list from 1929 to 1944, inclusive, newspapers went out of busines or suspended publication as a daily newspaper at a time when another newspaper in that city had a unit combination rate in effect?

A. (Examining document.) My count shows up twenty.

Mr. Kramer: Thank you, sir. That is all of the direct examination.

Cross examination.

By Mr. Wilson:

Q. Mr. Pepper, I understood that you were directed by the Government to examine a list of forty-five cities and that you had a letter so instructing you?

A. Yes, sir.

Q. Do you have that letter with you?

A. I do.

Q. May I see it, please?

Mr. Kramer: There is no objection to his seeing the letter, Your Honor.

A. (Document handed to counsel.)

Q. Mr. Pepper, did you have any knowledge of how this list was prepared other than the information given you in this letter?

A. No, sir.

[fol. 1880] Q. Then you didn't know, did you, that Mr. Cook Coen, who had formerly been employed by the Item, assisted Mr. Kramer in the preparation of this list?

A. No, sir.

Q. I understood you to tell Mr. Kramer, on direct examination, that you expected to be paid by the Government for coming down here. Are all of your expenses being paid by the Government to come down here?

A. Yes, sir.

Q. You are staying at the St. Charles Hotel, are you not?

A. Yes, sir.

Q. Isn't it a fact that Mr. Eberhard Deutsch, the attorney for The Item Company made your reservation at the St. Charles?

A. No.

Q. He did not?

A. No. Mr. Kramer, so far as I know, made the reservation when I got in. I don't know anything other than that.

Q. You didn't know that Mr. Deutsch did make the reservation, that Mr. Deutsch called Mr. O'Leary and made the reservation.

A. I did not know that, sir.

Q. Now, this list of forty-five cities is not submitted as any typical list of any particular type, is it? It is simply a list handed you to check the history of the newspapers in that town as shown by the files and records of Standard Rate & Data?

A. That is right, sir.

Q. And I note back here that in many instances you say [fol. 1881] that a paper "merged"; that is, that the paper—one paper—merged with the other paper. So far as you are concerned you don't have an information as to who swallowed who in those situations, do you?

A. That is right. Unless it be reported here. This information is taken directly from our file copies.

Q. But so far as your records show, it may have been the single paper publishing only either morning or evening that took over the unit rate paper. Isn't that true? I mean, even though the name stays the same the corporations could have done that, could they not?

A. It may be. And if it is not stipulated in here just

what the circumstances were, as given to us, I would not know.

Q. And so far as those papers which you have down as "suspended publication", it may be that the plant burned down, may it not? or somebody blew it up?

A. I wouldn't know what may have been the reason for it.

Q. In other words, there is no information as to what happened to them or why it happened?

A. That is right.

Q. All you know is that one day it was publishing and the next day there wasn't any paper under that particular name?

A. That is according to the information that we received.

Q. Now, you were talking about this busines of the retail trading area, so I take it from your discussion of that that you know what is referred to by the Census Bureau as the "Metropolitan" area of a city, do you not?

[fol. 1882] A. To a degree; yes.

Q. Well, you understand what the metropolitan area is as well as you understand the retail trading zone, don't you?

A. Yes. One is set up by the ABC and one is set up by the Government Census Bureau. Another may be determined by the newspaper itself, in cooperation with the Chamber of Commerce, or some other, shall we say, disinterested organization insofar as the area of population is involved in that newspaper.

Q. Well, I just want to be sure we will understand what we are talking about when we are using the term "Metropolitan area" in discussing this.

You are not saying that it makes any difference whether the newspaper's publishing plant is inside the corporate limits or outside the corporate limits of the city in which it serves the metropolitan area, are you?

A. No. Our listing is determined basically on where the second class mailing permit is issued from, or where it is described or indicated by the Audit Bureau of Circulations as being published in a particular city.

Q. Well, if in Kansas City we decide to move the Kansas

City Star and Times plant out to Clay Como, which is outside the city limits, it will still be the newspaper under Kansas City, will it not, that serves Kansas City?

A. So long as it retains its second class entry at Kansas City or is described by the Audit Bureau of Circulations as [fol. 1883] the Kansas City newspaper.

Q. Well now, you are familiar enough with the geography of Missouri and Kansas, are you not, to know that Kansas City, Kansas, and Kansas City, Missouri, are in the same metropolitan area?

A. I believe they are.

Q. And your report on Kansas City, Missouri, indicates that there is only the Kansas City Star and Times publishing there as a unit combination paper, doesn't it.

A. (Examining document) That is right.

Q. Now, I want you to look at Kansas City, Kansas, and see if you don't find the Kansan, in Kansas City, Kansas, which is not publishing morning and evening, but is publishing only evening and Sunday. Or maybe it is morning and Sunday.

A. The Kansas City Kansan, according to our record, shows it is published evening and Sunday.

Q. Well now, how about the geography of San Francisco? Are you familiar enough with that to know that Oakland and San Francisco are in the same metropolitan area?

A. No.

Q. Well, I'll ask you to assume that Oakland and San Francisco are in the same metropolitan area, and I want you to tell the Court what the situation is in Oakland as to newspapers.

Mr. Kramer: I object, Your Honor, because as far as I can see "G-154" does not have that town listed. Are you talking about "G-153"?

[fol. 1884] Mr. Wilson: I am talking about both 153 and 154.

Mr. Kramer: It is not on 154.

Mr. Wilson: You will find San Francisco, won't you?

Mr. Kramer: It is not on 154. It is on neither list.

Mr. Wilson: I will withdraw that question.

The Court: Am I to understand the newspapers in San Francisco did not have the unit rate?

Mr. Kramer: That is right, Your Honor.

The Court: If it did, I assume it would be on the list?

Mr. Kramer: That is right.

By Mr. Wilson:

Q. How about Omaha? Are you familiar enough with the geography of Nebraska and Iowa to know that Omaha and Council Bluffs are in the same metropolitan area?

A. I gather they are.

Q. And you have Omaha listed as a town which has only a unit rate paper, publishing there now, do you not?

A. That's right.

Q. I wish you would look in your book there and look at Council Bluffs and see what the situation is with the Non Pareil.

A. The Council Bluffs Nón Pareil is published evening and Sunday.

The Court: That is a unit rate?

A. No, it is not.

The Court: Go back to Kansas City, Kansas. The [fol. 1885] "Kansas City Kansan", did you say?

Mr. Wilson: Kansan; yes, sir.

A. That is an evening and Sunday newspaper. Therefore, no unit rate.

By Mr. Wilson:

Q. And it is entirely possible, is it not, Mr. Pepper, that if I went through this list and checked by geography book carefully, I might find a number of cities where the situation was comparable to what we found it was in Kansas City, with Kansas City, Missouri, and Kansas City, Kansas, in the same area, or we found in Nebraska with Omaha right across the river from Council Bluffs, in Iowa?

A. That is right, sir.

Q. Well, Mr. Pepper, are you familiar with the fact that sometime during this period of 1929 to 1949, there were papers in Camden, New Jersey, owned by Mr. David Stern, which were using a unit rate?

A. I know there was a situation down in Camden. What was it? the Philadelphia Record and Camden Courier-Post. Was that it?

Q. As a matter of fact, the situation was this, was it not: that you had a morning and evening unit rate in Camden and you could also get a hook-up with the Philadelphia Record over in Philadelphia if you wanted a third paper thrown in?

A. Some kind of arrangement like that, if I recall it correctly.

Q. And we no longer have any unit rate papers in Camden, New Jersey, do we? If you will check.

[fol. 1886] The Court: The list does not show one.

A. This list doesn't show.

Mr. Kramer: We so stipulate, Your Honor.

By Mr. Wilson:

Q. But we have still got papers right in Philadelphia which sell either morning or evening, but no unit rate papers at all in Philadelphia, have we not?

A. That is right.

Q. And Philadelphia and Camden are in the same metropolitan area, are they not?

A. Well, I don't know.

Q. Mr. Pepper, as I understand the information appended to the table in Government's Exhibit 153, there is no information except in certain specific cases as to when a paper started publication. Your information is only directed to when it suspended publication, except in those instances where it has been mentioned there?

A. That is right. Unless the newspaper began publication on a daily basis subsequent to 1929 it would not be recorded when the date the newspaper started.

Q. You have no information, do you, which would indicate as to these newspapers that suspended publication what their circulation records had been from the time they started until the time they suspended publication?

A. That information would be available through the records of Standard Rate & Data Service.

[fol. 1887] Q. But you made no examination and could not answer anything in regard to that at this time?

A. I could not.

Q. You do not know whether any of those papers suspended publication because of inefficient management, do you?

A. No, we do not.

Q. You have no information shown here that would indicate whether those papers were attempting to operate a Sunday paper that was draining away all of their assets, do you?

A. No, sir.

Q. You do not know whether any of those papers that we have listed as daily papers published a paper five days a week and on Saturday published a paper called a Sunday paper, do you?

A. No. I cannot say that I do.

Q. Well then, we may assume, may we not, Mr. Pepper, that all of the information that you have to give us in connection with this matter can be found in these exhibits 153 and 154?

A. That is right, Sir.

Q. Mr. Pepper, do you recall when the Philadelphia Record suspended publication?

A. No, I do not, sir.

Q. Do you know who the publisher was at the time it did suspend publication?

A. I did not recall until somewhere in a conversation, I understood a Mr. Stern; and then it came back to me he was [fol. 1888] associated with one of the papers.

Q. Mr. David Stern?

A. I don't recall.

Q. And he was also associated with the papers over in Camden, New Jersey, that had the unit rate, was he not?

A. I believe there was some association there. But quoting from memory only: not from any official record.

Q. And your 1949 volume of Standard Rate & Data shows that there is a Mr. Stern who is also the publisher of the Item, does it not?

Mr. Kramer: We so stipulate.

A. "President and Publisher, David Stern III."

Q. Mr. Pepper, refer to Camden, New Jersey, and tell me what is publishing in Camden at this time.

A. The Courier and Post, an evening newspaper.

Q. And I believe that the Philadelphia Record is no longer in existence, is it?

Mr. Kramer: We so stipulate.

Q. So the triple combination between Philadelphia and two Camden papers, the only thing left is the single newspaper publishing in the evening in Camden?

Mr. Phelps: Would you stipulate that?

Mr. Kramer: That, I don't know. You will have to look it up. My memory isn't that good.

A. Well, in Camden we have the Camden Courier-Post, as the evening paper. In Philadelphia we have the Evening [fol. 1889] Bulletin, the Morning Enquirer, the Evening News: those three. I have not included the Sunday-only editions.

Q. And none of those are sold in combination, are they?

A. That is right, sir.

Q. And the only thing that is missing now is that triple-play combination of the Philadelphia Record and the two Camden papers?

A. Well, I don't know what all existed at the time of that situation that you speak of.

Mr. Wilson: That is all.

The Court: I would like to ask you a question:

You say you have been with the company twenty-five years?

A. Yes, sir.

The Court: You were there during the great depression?

A. Yes, sir.

The Court: Did that depression adversely affect newspapers, as it did other businesses generally?

A. Well, if I could use this report as a basis for it, I don't know that it discloses anything particularly, one way or the other.

The Court: You don't remember that?

A. The circumstances of the depression: and its effect on those?

The Court: Yes.

A. Well, it was a case where advertising was curtailed with the newspapers. They stretched it over a five-day period instead of requiring that they use advertising in the evening and morning editions the same day, or [fol. 1890] something of that sort. There were three five-day leeways.

The Court: And many newspapers had hard times, just as many other businesses did?

A. I imagine, like every other business.

The Court: Do you remember what period of time is considered the period of depression? What years?

A. I believe it might be considered from, as it affected our business, I would say 1931 through about '35, and then there was a little of '36 in there and then we came up a little bit and went back down a little bit and then came back up again.

The Court: Had you noticed in connection with these figures which are disclosed by "G-153", the number of these papers suspended during that period?

A. No, I did not take any recognition of the dates.

The Court: Take the Phoenix paper; 1931: that was in the midst of the depression: in the very beginning of the depression?

A. That is right.

The Court: Santa Rosa paper. Do you have that exhibit?

A. I have it here.

The Court: Wasn't that in 1939?

A. December, 1939.

The Court: Take Columbus, Georgia, May, 1938. Is that correct? Is that when it suspended?

A. My record: May 10, 1938.

[fol. 1891] The Court: Louisville, Kentucky, paper. 1936?

A. That is right.

The Court: In the midst of the depression.

Oklahoma City. 1936?

A. That is right.

The Court: Worcester, Massachusetts. 1938?

A. That is right.

The Court: Very well.

Redirect examination.

By Mr. Kramer:

Q. Do you know whether or not the Kansas City Kansan is sold on the streets of Kansas City, Missouri.

A. No, I would have no information about that.

Q. You don't know.

If a newspaper went into business as a daily in or after the year 1929 in any of the forty-five cities listed on "G-153" would that fact be included in "G-152"?

A. In this list of forty-five cities, any conditions, whether it be starting as daily, combination, merging, or changing of title, is all recorded in the detailed work sheets.

Q. I didn't know, when you were asked about Mr. Stern, I think it was, you said, "Somewhere in a conversation" you learned something. Conference with whom?

A. I talked with somebody this morning, and we were—I just inquired as to who the publishers—who was down here, [fol. 1892] actively, on the Item. Somebody said, "Mr. Stern." Of course, I associated it with the Mr. Stern of the Camden paper.

Q. When did you first meet me?

A. Last evening, at the airport.

Q. And do you remember somewhere shortly after midnight we went to Mr. Wilson's room last night?

A. Yes, sir.

Q. Do you recall we placed under his door the copies of "G-153" and "G-154"?

A. Yes, sir.

Q. State whether or not we had breakfast with him this morning?

A. We did have breakfast with him this morning.

Q. When did you arrive last night?

A. About 7:40.

[fol. 1893] Mr. Kramer: I am returning to you now, Mr. Pepper, unless counsel objects——

The Court: If you really want to know who he talked to—he still hasn't said.

Mr. Kramer: Was it one of our associates here?

A. I believe it was. I said "good morning" to so many people around here.

Mr. Wilson: I will stipulate it wasn't me.

Mr. Kramer I don't know.

Is there any further examination?

(No response.)

Mr. Kramer: You may step down.

(Witness excused.)

The Court: Let's go on, gentlemen.

Mr. Kramer: That concludes the rebuttal. I do have a few little details, Your Honor.

Mr. Wilson: If the Court please, we have two witnesses on surrebuttal, about three questions to one and about two to the other. It won't taken any length of time at all.

Mr. Mr. Kramer: I will save my matters.

The Court: Very well.

[fol. 1894] SURREBUTTAL TESTIMONY ON BEHALF OF THE DEFENDANTS

ROLAND LADREYT, a witness recalled by and on behalf of the Defendants on surrebuttal was further examined and testified as follows:

Direct examination.

Mr. Phelps: Your Honor, I would like to have it understood that this testimony goes solely to the question of the intent of the management of The Times-Picayune Publishing Company in connection with the institution of the unit rate. I would like to have it also clearly understood in the record that the testimony of Mr. Pepper went also to that sole purpose.

Is that understood, Mr. Kramer?

The Court: I think it has been stated.

Mr. Phelps: I would like to have it understood in those terms, if I may.

Is that correct, Mr. Kramer?

The Court: I think that matter is settled.

Mr. Phelps: And the Government will be bound in that respect, so that we understand that that testimony goes soley to the monopoly question or Section 2 of the Sherman Law.

Mr. Kramer: That, I don't understand, because I don't know what Your Honor's——

Mr. Phelps: That is why I wanted to get it cleared up, because I don't want to have any misunderstanding on it.

Mr. Kramer: As to the second point, Your Honor, the [fol. 1895] evidence that Mr. Tims gave under whatever theory Your Honor admitted it, which, I am unable to state, if it is limited to Section 2, we are delighted.

The Court: Very well.

By Mr. Phelps:

Q. Mr. Ladreyt, will you please state the total amount of advertising carried by The Item Company for the year 1950, as shown by Media Records?

A. 16,614,855 lines.

Q. How does this total advertising compare with the total advertising of The Item Company and all predecessor companies for the years prior to 1950?

Mr. Kramer: Objection, Your Honor.

Could I inquire as to how this can show the intent of the Defendants?

Mr. Phelps: Certainly.

Mr. Kramer: Would you make a statement?

Mr. Kramer: I will be glad to. Government counsel, in antitrust cases, have been prone to assume intent from what happens. This is the reverse of that. This testimony is designed to show that The Item Company is in a healthier situation than it has ever been in in its entire history and that, for whatever it is worth, and I will concede that it is just slightly less worthless than the testimony that the Government has put on; but, for whatever it is worth, I think it is admissible.

Mr. Kramer: Well, I object, Your Honor.

[fol. 1896] The Court: I overrule the objection.

By Mr. Phelps:

Q. How does the total advertising compare with the total advertising of The Item Company and all predecessor companies for the years prior to 1950?

A. Do you wish me to quote figures?

Q. Just tell me whether it is better or worse.

A. It is by far better.

Q. What is the next best year which The Item Company or any of its predecessor companies had in total advertising? And what was the amount of the total advertising carried during that year?

A. It was the year 1949, and they carried a total of 13,788,845 lines.

Q. So that they had a gain of approximately 3 million lines in 1950 over 1949?

A. That is correct.

Q. And that 1949 was their best year theretofore?

A. Yes.

Mr. Phelps: That is all, Mr. Ladreyt.

Cross examination.

By Mr. Kramer:

Q. Were those lineage figures you were giving total lineage?

A. Total lineage.

Q. Retail Display and Classified? Is that right?

A. Yes, and Legal.

[fol. 1897] Q. By speaking of "best year," you are speaking of advertising lineage, not net income? Is that right?

A. I only know about the lineage quoted, only from the lines quoted by Media Records.

Q. Only speaking of lineage?

A. That is correct.

Q. Do you know what year it was that the Times-Picayune carried the most total lineage? The Times-Picayune Publishing Company?

A. When they carried what?

Q. In what year did The Times-Picayune Publishing Company carry the most advertising lineage it ever carried in its history?

A. Total?
Q. Total.
A. I don't have the records.
Q. Don't you know that it was the same year that the Item did? 1950?
A. I wouldn't want to say. I don't know.
Q. You really don't know?
A. No, sir.
Q. Well now, how about General advertising lineage? You are the manager.

Mr. Phelps: If the Court please, I don't see what this has to do with the healthy condition of The Item Company, in so far as lineage is concerned.
I object to the line of questioning.
[fol. 1898] The Court: I overrule the objection.

By Mr. Kramer:

Q. In what year did The Times-Picayune Publishing Company carry the greatest amount of General Advertising measured in lines?
A. You mean, the morning and evening, combined?
Q. All papers, yes, and Sunday.
Q. That would be 1950.

Mr. Kramer: No further questions.
Mr. Phelps: That is all, Mr. Ladreyt.

(Witness excused.)

Mr. Phelps: Mr. Coleman, please.
If the Court please, I believe this record should show this is the same Mr. Ladreyt who testified earlier.
The Court: Let it so show.

DONALD W. COLEMAN, a witness recalled by and on behalf of the Defendants on surrebuttal was further examined and testified as follows:

Direct examination.

By Mr. Phelps:

Q. You are the same Mr. Coleman who testified earlier in this case?

A. That is correct.

Q. Mr. Coleman, have you just received the circulation figures for the six-day Item or five-day Item during the last nine months of 1950?

[fol. 1899] A. I received the circulation figures, Audit Bureau of Circulation, for the entire year of 1950, in which the figures were broken down.

Q. Well, would you tell us?

A. In the last nine months and first three months——

Q. Would you tell us how the Item's weekday circulation in 1950 compares with the Item's weekday circulation in prior years?

Mr. Kramer: Objection, Your Honor. Is this being asked for the same limited reason that the examination of Mr.——

Mr. Phelps: For the same limited reason.

The Court: Let's have that over again. For what purpose is this being offered?

Mr. Phelps: In an antitrust case, the Government will frequently say that the condition of a particular company's being a failing condition indicates that there was an intent on the part of a competitor to bring about that condition. In other words, they will presume intent from effects.

For whatever it is worth, we are showing that in so far as any effects in this case are concerned, that The Item Company is in healthier condition than it has ever been in its entire history.

Mr. Kramer: I don't see how you show health.

The Court: Aren't you saying that the intent of the Picayune publishers in 1947 was to injure the Item, that they have failed to injure it, because the result shows differently?

Mr. Phelps: That is the sum and substance of it, Your

[fol. 1900] Honor. I admit that it has very little value and say honestly more value than the testimony offered by the Government.

The Court: In other words, if there was a conspiracy, it was a failure.

Mr. Phelps: Well, in so far as you can presume intent from effects, there is no such presumption to be drawn in this case.

The Court: All right.

By Mr. Phelps:

Q. Mr. Coleman, how does the circulation of the weekday Item in 1950 compare with the circulation of the weekday Item in prior years?

A. The Item in 1950 had 104,000 evening circulation, Monday to Friday, and 96,982 Saturday, only, circulation.

Q. How does that compare with prior years, Mr. Coleman?

A. Nine months.

Q. Beg pardon. Excuse me.

A. And they had 99,658.

Mr. Kramer: May I inquire what he is reading from?

A. I am reading from the Audit Bureau of Circulation Report, 1950, just received.

Mr. Kramer: Good. Let's put it in evidence.

Mr. Phelps: If you would like, certainly.

A. They had 99,658 for the first three months of 1950. By taking those figures and averaging them out and carrying them with the figure of 1949 of the Item's total daily circulation, from the ABC of 1949, it shows that the Item [fol. 1901] had 102,360 six-day, average circulation for 1950 as compared to 97,112 for 1949, or a gain of 5,448.

The figures which I just added are not from the—They are not the ABC figures, but they are the addition of the ABC figures.

The Court: Taken from the ABC figures?

A. Yes, and added.

The Court: You have compared five days of '49 with five days of '50? Is that correct?

A. No, sir. In 1949, the Item's figures were broken down by the Audit Bureau of Circulation for six days. At that time, there was only a six-day Item.

In 1950, the first three months of 1950, the Bureau broke the figures down into six days, because there wasn't any Sunday paper; but the last nine months, the Bureau broke them down to five days, Saturday and Sunday; therefore, I had to take the figures and average them out to be able to compare them with 1949, to make the six-day comparison between 1950 and the six-day comparison in 1949.

The Court: What did you average up? That is what I want to know? Oh, I see. The paper was changed from a Saturday to a Sunday paper at the end of the year.

A. That is right. Also, there wasn't any Sunday paper for the first three months of the year.

The Court: I understand.

By Mr. Phelps:

Q. Mr. Coleman, how does the Item's circulation—Strike that.

[fol. 1902] How does the Item's daily circulation for 1950 compare with prior years of the circulation of the daily Item?

A. It is the largest daily circulation in their history.

Q. To what extent is it the largest in their history, approximately? We have '49 in evidence.

A. The previous year, 1949, was the largest year prior to that, and 1950 tops that by 5,248 copies.

Q. Thank you, Mr. Coleman.

Would you identify the document which you were reading which I have marked "D-23"?

A. That is Audit Bureau of Circulation's Item Statement for the year 1950.

Mr. Phelps: In connection with the testimony of the witness, we offer in evidence Exhibit D-23.

The Court: It will be admitted.

(The document referred to was marked "D-23" for identification and was received in evidence.)

Mr. Phelps: We have no further questions, Your Honor.

Cross examination.

By Mr. Kramer:

Q. Mr. Coleman, do you have the ABC reports for the 1950 calendar year for The Times-Picayune and the New Orleans States?

A. Yes, sir.

Q. May I have them, please?

A. This (handing document to counsel) is 1950 for the [fol. 1903] States and this (handing document to counsel) is for the Times-Picayune.

Mr. Kramer: I offer in evidence G-155 and G-156. G-155 is the ABC report for the twelve months ending December 31, 1950 for the Times-Picayune, morning, Sunday Times-Picayune-New Orleans States.

G-156 is the Audit Report for the New Orleans States for the same period.

I understand that these reports have just been received here by the Defendants within the last few days.

Mr. Phelps: The witness can answer that. I think it is within forty-eight hours.

A. They were received yesterday.

Mr. Kramer: May they be admitted?

The Court: Let them be admitted.

(The documents referred to were marked "C-155" and "G-156" for identification and were received.)

By Mr. Kramer:

Q. Can you tell, without my showing you the exhibits, whether or not the Times-Picayune, morning, had an increase in circulation in 1950 over 1949?

A. I can tell you the results I have here from that, yes. I have got the figures which I have added from those two.

Q. I want to know if the Times-Picayune had a larger circulation in 1950 than it had in 1949.

A. That is correct.

[fol. 1904] Q. And did the States have a larger circulation in 1950?

A. That is correct.

Q. The amounts will be in evidence through G-155 and G-156 and D-23.

The Court: Let's have the amounts.

A. The Times-Picayune gain was 4,493: They carried 179,312 copies in 1950 as compared to 174,819 in 1949: That makes that gain of 4,493.

The States carried 97,157 in 1950 as compared to 95,298 in 1949, or a gain of 1,859.

Q. And you don't have the Sunday figures there, do you, sir?

A. The Sunday figures are on those statements there, but I haven't broken them down. I will be glad to read them to you.

Q. Just Sunday, for the Item, first, from D-23.

A. 94,046.

Q. And now Sunday for the Times-Picayune-New Orleans States?

A. 279,239.

Mr. Kramer: No further questions.

Mr. Phelps: That is all, Mr. Coleman.

(Witness excused.)

Mr. Kramer: If the Court please, I hope we can make this very short. First, I hand the Court his copy of G-145.

Mr. Wilson: If the Court please, we had quite a bit of testimony by Mr. Pepper from Standard Rate and Data, [fol. 1905] November, 1949. Rather than recall Mr. Pepper to the stand, I would like that volume marked Defendant's Exhibit 24 and received in evidence. If you want me to call him, I will.

Mr. Kramer: No objection. I will be delighted to have it in.

Mr. Pepper would like to take this volume home. He finds that he brought a copy down that has one page missing.

With counsel's permission, could you send direct to the Clerk another copy of this book?

Mr. Wilson: Well yes. Just let the record show the Defendants have offered in evidence Standard Rate and Data Service for November, 1949, as Defendant's Exhibit 24.

The Court: It will be admitted.

(The document referred to was marked "D-24" for identification and was received in evidence.)

Mr. Kramer: Now, if the Court please, I hand Your Honor the Court's copy of G-145-A through -E. The Clerk has had the copies since the offer.

I also hand the Court his copy of the Revised Government Financial Charts with the agreed-upon titles on them. The Clerk has his copy.

I hand to the Reporter three pages of corrections, all but one of which has been agreed to; and, that one, I apologize, but I feel I must ask the Court's guidance on that.

Upon Page 808 of the transcript, which is Volume VI, [fol. 1906] Line 10, Mr. Houghton's recollection and my recollection is that he said "yes, sir" instead of "sir" at that point. Then, you asked him, "Well, you don't know?" And he said "no".

The Court: "Was there an increase?". And I said, "You don't know." That should be a question, I think.

Mr. Kramer: Yes. I agree to that correction, too, but we haven't undertaken to correct the Court; neither side.

I did want to get it agreed that when the Court asked that question Mr. Houghton said "yes, sir" instead of "sir".

Mr. Phelps: I don't remember the question.

The Court: Suppose you gentlemen step up here. You can look at this copy.

(Bench Conference.)

The Court: Let that be changed to "yes, sir".

Mr. Phelps: I think we would have agreed to stipulate that, anyway, Your Honor. We might just as well make it "yes, sir". My recollection, as a matter of fact, is the same way the testimony is written up. The point is not important.

Mr. Kramer: If the Court please, as far as I can tell, that concludes the trial.

On behalf of all Government counsel, we want to express our appreciation for the patience you have shown throughout the procedure. It has been long and, I am afraid, at times, tiring.

The Court: It has been a very pleasant case to try.

Counsel on both sides were very cooperative and the Court appreciates it.

[fol. 1907] Mr. Phelps: We, of course, join in that expression of appreciation. We ask Your Honor's continued indulgence in the matter.

The Court: Very well. The Court stands at recess.

(Whereupon, at 1:00 o'clock, p.m., the trial was concluded.)

Reporter's Certificate to foregoing transcript omitted in printing.

[fol. 1908] In United States District Court, Eastern District of Louisiana, New Orleans Division

Civil Action No. 2797

United States of America, Plaintiff,

v.

The Times-Picayune Publishing Company, L. K. Nicholson, John F. Tims, Jr., Aubrey F. Murray and Donald W. Coleman, Defendants.

Opinion—Filed May 27, 1952

Christenberry, J.

This is an action filed by the United States under Section 4 of the Sherman Act, against the Times-Picayune Publishing Company, a Louisiana Corporation, which publishes the Times-Picayune (morning), the New Orleans States (evening), and the Times-Picayune and States (Sunday), L. K. Nicholson, its President, John F. Tims, is Vice-President and General Manager, Aubrey F. Murray, its Advertising Director, and Donald W. Coleman, its Circulating Manager.

The complaint alleges that (a) the defendant corporation has entered into and is a party to contracts with advertisers in unreasonable restraint of trade in newspapers,

news, advertising, supplies and nationally advertised products in violation of Section 1 of the Act; (b) all of the defendants are combining and conspiring in unreasonable restraint of the aforesaid trade also in violation of Section 1 of the Act; and (c) all of the defendants are combining and conspiring to monopolize, and are attempting to monopolize, the dissemination of news and advertising through newspaper channels, in violation of Section 2 of the Act.

The complaint seeks equitable relief to prevent the defendants from continuing to utilize the allegedly unlawful advertising contracts, and from engaging in other practices alleged to be restraining the trade of their only newspaper [fol. 1909] competitor in New Orleans, and preventing advertisers from freely selecting a medium for their evening newspaper advertising in New Orleans.

The answer of the defendants admitted some of the allegations of fact, but denied that any violations of law had been committed.

Although the Government undertook to support all of the charges, in its brief filed at the close of the trial the Government urged only the charges that the defendants have contracted in restraint of trade, and have attempted to monopolize trade in violation of Sections 1 and 2 of the Sherman Act. The allegations that defendants conspired among themselves in violation of Sections 1 and 2 of the Act were not urged, and must be considered as having been abandoned.

The Times-Picayune Publishing Company has published in New Orleans continuously since prior to 1933, a morning and Sunday newspaper (known in the morning as the Times-Picayune, and on Sunday since 1933 as the Times-Picayune-States), which is in general circulation in the city of New Orleans and elsewhere in the State of Louisiana, and in other states of the United States.

During the period from July, 1941, until March, 1950, the Company published and distributed and sold the only Sunday newspaper published in New Orleans.

The States was formerly published as an evening newspaper by the Daily States Publishing Company, Ltd. On July 17, 1933, the Times-Picayune Publishing Company

purchased from the Daily States Publishing Company, Ltd., the name, good will, and circulation of the newspaper known as the New Orleans States, its contracts with advertisers, and also its contracts and rights to be furnished news, features and comics. The contract of purchase provided that the vendors would not engage in the newspaper publishing business in the New Orleans area for a period of ten years thereafter; that the vendors would not for a period of nine [fol. 1910] months thereafter sell any part of their machinery or equipment to any purchaser located in the New Orleans area, and that in any sale of any part of the machinery or equipment to any person, there should be included an agreement on the part of said purchaser that the machinery or equipment would not be used by it or its assigns in the New Orleans area within nine months from the date of the contract; and that the vendors for a period of nine months would not sell any part of the machinery or equipment without first offering it to the defendant corporation. Since said purchase, the Company has published the States as an evening newspaper of general circulation in New Orleans and elsewhere in the State of Louisiana, and in other states of the United States.

The New Orleans Item is a newspaper of general circulation published in the evening, Monday through Friday, with a Sunday edition which comes out on Saturday. The New Orleans Item competes with the newspapers published by The Times-Picayune Publishing Company. It is published in New Orleans, and has a circulation in New Orleans and elsewhere in the State of Louisiana and in other states of the United States.

The Times-Picayune, States and Item are the only significant media of news, advertising and other information, disseminated regularly for residents of New Orleans through publication and circulation of newspapers.

The Times-Picayune and the States are Separate Newspapers

The defendants asserted in their answer, and contended throughout the trial, that the Times-Picayune, the States and the Times-Picayune-States are editions of a single newspaper published by The Times-Picayune Publishing

Company. However, the evidence establishes beyond question that the defendant corporation publishes two separate and distinct newspapers, consisting of the Times-Picayune, morning and Sunday, the Sunday edition being called "The Times-Picayune-States", and the States, evening. These [fol. 1911] newspapers are separate and distinct and have always been considered so by defendants. They reach separate groups of readers; are produced at least in part by separate organizations; and have separate news and feature content. Although the editorial policy is identical, the editorial content is different. The two newspapers have an entirely different and distinctive make-up and appearance.

On three occasions in 1949 the managers of general advertising for the Company, Mr. Roland Ladreyt, wrote to national advertisers stating that "entirely separate organizations" "produced" the Times-Picayune and the States. In two of these letters he pointed out that the Times-Picayune and the States each has its own complete staff, including editor, managing editor, city editor, reporters, and photographers; that there is actually competition in the respective departments for "breaking first with outstanding events"; that the circulation departments are on a competitive basis; and that the retail advertising staffs are separate. He stated further the makeup of the States and the Times-Picayune is as different as the New York Times and the New York Journal American, and also that more than 35,000 families in New Orleans subscribed to the New Orleans States which did not have the Times-Picayune week-day delivered to their homes. All of the representations made by the manager of general advertising in these letters are borne out by the evidence, including the testimony of the defendant Tims, and that of Mr. George Healy, Vice-President of the defendant corporation, and Managing Editor of the Times-Picayune.

The Times-Picayune and States contain different features, syndicated columns, editorial cartoons, comics, and news. Separate contracts with the Associated Press and feature syndicates were signed by the defendant corporation for the Times-Picayune, and for the States. In each of

those contracts which concerned the States that publication was referred to as "a newspaper."

[fol. 1912] The audits of the Company's books and records for the years 1947 to 1949, prepared by Haskins and Sells, Certified Public Accountants, show an allocation of revenues and expenses as between the Times-Picayune and the States, and these allocations were accepted by the accounting firm as they appeared on the books and records of the Company.

The statements rendered by the Company for advertising and the letterheads of the Company refer to the Times-Picayune as being issued "every morning and Sunday", and the States as being "issued every evening except Sunday".

The defendant corporation, over the notarized signatures of defendants Tims and Coleman, submits to the Audit Bureau of Circulation separate statements for the Times-Picayune, morning and Sunday, and the States, evening.

In testifying before the War Production Board in 1944, the defendant Tims stated that when the Company bought the New Orleans States in 1933, it elected to keep it as a separate newspaper.

In the Times-Picayune of January 25, 1937, there appeared an historical account of the defendant corporation's operations, and in referring to the States the account stated:

> "In 1933 the Times-Picayune Publishing Company bought the New Orleans States. The Sunday States was merged with the Times-Picayune. The week-day States continued its separate existence."

In an announcement in the Times-Picayune of July 18, 1933, the former owner of the States stated, "Under the terms of the sale, the New Orleans States will continue to be published as a six-day newspaper in the afternoon field."

The Times-Picayune's Dominance in New Orleans and in the New Orleans Trading Territory

That the Times-Picayune is the dominant newspaper of New Orleans and its trading territory, there can be no [fol. 1913] doubt. It is the only morning newspaper of

general daily circulation published in New Orleans, and there are no other daily morning newspapers circulated in New Orleans which compete with it for local and national advertising in the morning field. In each of the years 1949 and 1950 its circulation was equal to the combined circulation of both the States and the Item. For at least twenty years the Times-Picayune has been the largest newspaper in New Orleans in circulation, advertising lineage, and number of pages published.

The Company has asserted, quite justifiably, that "The Times-Picayune is the dominant newspaper of New Orleans and its trading territory."

The Manager of General Advertising for the defendant corporation, in 1949, wrote that the Times-Picayune is "the back-bone of any advertising effort" in the New Orleans market. That statement is doubtless true.

Enjoying as it does a monopoly position in the morning field, and an enormous advantage in circulation, advertising lineage and number of printed pages, newspaper advertisers who desire to cover the New Orleans market must, of necessity, use The Times-Picayune as a medium for their advertising.

Defendant's Advertising Contracts

Advertising in New Orleans newspapers is commonly divided into three principal categories, namely: Classified, General, sometimes called national, and local display, sometimes called retail.

Classified Advertising

The defendant corporation at all times since March, 1935, has required advertisers using classified advertisements to agreee to purchase, and to purchase, such advertisements in The Times-Picayune and The States, as a unit, at combination rates, and has refused to sell such advertising in [fol. 1914] the morning or evening newspapers separately, except for what is known as "over the river" classified advertising. The "over the river" classified advertising represents such a very small part of the total classified as to be relatively unimportant.

There seems to be no doubt but that the purpose of the

unit rate on classified advertising is to increase the lineage of such advertising in The States, and certainly that has been its effect. In 1934, that is to say, one year prior to the adoption of the unit rate on classified advertising, and while The States was under the ownership of the defendant corporation, The States carried less than one-half the number of lines of such advertising carried by The Times-Picayune. By 1936, after one year of the unit rule, the classified lineage of The States had risen to a par with that of The Times-Picayune. This was inevitable, since in order to obtain lineage in The Times-Picayune it was necessary for a classified advertiser to take a similar amount of lineage in The States. During the ensuing 15 years, up to and including 1950, the spread between the lineage in each of the two newspapers, and that of The Item, steadily increased. As a matter of fact, during the years 1946 through 1950, because of the "over-the-river" classified advertising, which advertising was carried only by The States, The States carried more classified advertising lineage than did The Times-Picayune.

In 1950, classified advertising lineage carried by The Times-Picayune and by The States approximated four and one-half million lines each, or more than double the lines carried by The Item. In 1934 The States carried 35 per cent of the classified advertising lineage in the evening field. By 1950 it carried 68 per cent of such lineage. It is only reasonable to attribute at least a major portion of this increase to the compulsory rate.

[fol. 1915] A number of classified advertisers testified that The Times-Picayune is their first selection as an advertising medium in New Orleans. Four of them testified that The Item is their second choice. Three such advertisers testified that budget limitations require them to place only a limited amount of advertising in newspapers in New Orleans. Two testified that they would place advertising lineage in The Item if the unit rule were not in effect. There was evidence that at least three advertisers increased their advertising lineage in The States, or added The States to their schedule involuntarily, as a result of the unit rule. The unit rule is not followed with respect to local display advertisers, and the explanation was made by the Manager of General

Advertising of the Company, that it would be an imposition on retail advertisers to have a unit rate for them, "because the retail advertisers gear their advertising to produce immediate over-the-counter results, and an advertiser . . . may be sold out by 11 o'clock in the morning." It is proper to mention here that many retailers use classified advertising, and why it would be an imposition to exact a unit rate for local display advertising, and is not for classified, was not explained. It seems clear beyond question that many classified advertisers are required to purchase what they do not want, namely, space in The States.

General Advertising

From 1933 to 1940, general advertisers were afforded an opportunity to purchase advertising space in the Times-Picayune and the States separately, but were given the benefit of an optional combination rate for advertisements carried in both papers, the combination rate being lower than the sum of the individual rates for each newspaper. [fol. 1916] The unit rate for national advertising was first adopted by the defendant corporation on June 1, 1940. It was optional and continued in effect, with some changes in details, for ten years. Under this arrangement, the Company required advertisers, in order to obtain a reduced rate on general advertising in excess of 10,000 lines in its daily papers, to contract to purchase, and to purchase, such advertisements in excess of 10,000 lines in a combination of the Times-Picayune and the States.

The defendant corporation issued a new general rate card effective February 1, 1950, requiring general advertisers to contract to purchase general advertising in the Times-Picayune (daily only), and in the States (daily only), as a unit at combination rates, and refusing to sell such advertising in each newspaper separately.

At that time, profits in the Times-Picayune, before general and administrative expenses, were increasing while those in the States were decreasing.

The purpose of the defendants in adopting the unit rate on all general advertising is illustrated by a memorandum prepared by the national advertising representative of the defendant corporation, V. J. Kelley, and sent by him to his

various branch offices. This memorandum was written on November 26, 1949, after Kelley had attended conferences with representatives of the defendant corporation, including defendants Nicholson and Tims, at which the adoption of the unit rate was agreed upon. Copies of the memorandum were sent to Mr. Tims and to Mr. Ladreyt. In his memorandum, after stressing the favorable position occupied by the Times-Picayune and the States, with respect to circulation coverage of the New Orleans market, Mr. Kelley stated:

> "We anticipate that a relatively few accounts which have formerly used the Times-Picayune exclusively or the other evening paper in conjunction, many endeavor to prevent the 'old order changeth.' In those cases be firm. The policy has been set * * *."

[fol. 1917] and further:

> "Last, but not least, this single unit plan cut to eliminate to a great extent the deleterious selling on the part of our evening contemporary, which, in the long run, is not to the best interests of the manufacturer."

During his testimony, in reply to a question, Mr. Kelley stated that it was true in a number of cases that the advertising agencies favored the compulsory or unit rate, because once an agency had made its selection or its recommendation of media to the advertiser, the agency could resist any pressure brought to make a change in media by pointing to the unit rate as making such change impossible.

The unit rate on general advertising resulted in an increase of more than 30% in 1950 over 1949 in such lineage in the States. Some accounts which had used the Times-Picayune exclusively, or some other paper in conjunction therewith, objected to the imposition of the forced combination. Seventeen national advertisers or advertising agents testified at the trial concerning the effect on their advertising of the unit rate. National advertising expenditures are budgeted, and only a limited amount is placed in newspapers in any one city. A great number of advertisers use only one morning and one afternoon newspaper, and some advertisers

completely abandoned use of the daily Item, while others reduced their lineage in that newspaper, as a result of the forced unit rate in general advertising. Some advertisers increased their general advertising lineage in the States, or added the States to their schedule involuntarily as a result of the unit rate.

During the four years preceding the introduction of the unit rate the Times-Picayune carried in excess of 50% more general display advertising than the States or the Item. Following the establishment of the forced unit rate, general display lineage carried by the States rose sharply. Within [fol. 1918] several months, after unexpired contracts had been completed, the lineage of the States equalled that of the Times-Picayune. In the meantime, such lineage in the Item showed a slight gain. It is impossible, of course, to state with any degree of precision what portion of the increased lineage enjoyed by the States would have gone to the Item but for the forced unit rate. However, it is clear that some general advertisers bought space in the States which they would not have purchased in either afternoon paper, while others bought space in the States which they would have purchased in the Item absent the forced unit rate. It is clear, too, that the States secured a commanding lead over the Item in the general display field after it had the advantage of the unit rate, and not until then.

Local Display Advertising

Since 1935, the defendant corporation in connection with contracts for display advertising has provided that any advertiser contracting for lineage in the Times-Picayune would be billed for any advertising in the States during the period of the contract, at the States rates, but based upon the lineage contracted for in the Times-Picayune. From 1938 to 1946 the defendant corporation offered retail advertisers a reduction of one cent a line on all advertising carried in both the Times-Picayune and the States, provided the identical copy was placed in each newspaper. In 1946, the one cent reduction was abandoned, but the offer of a reduced rate to States advertisers, based upon the amount of lineage contracted for in the Times-Picayune,

was continued. The effect of these inducements doubtless was to draw some advertising from the Item to the States.

News Vendors

The Item Company, in November 1949, announced plans to begin again publication of a Sunday newspaper, its Sunday edition having been suspended in 1941. Publishing, as they did at that time, the only Sunday newspaper in [fol. 1919] New Orleans, it goes without saying that this announcement caused concern to the defendants. It is in evidence that defendant corporation's Manager of General Advertising wrote a letter in January, 1950, in which he stated:

> "In our opinion, there is no necessity for another Sunday paper in New Orleans, and the plan of the Item to enter the Sunday field beginning March 5th is not economic from the standpoint of the reader and the advertiser, and we consider their doing so an infringement on a franchise which we believe belongs to us."

The Government contended that defendants sought to hinder the Item in distributing its Sunday newspapers by warning the defendant corporation's news vendors that if they handled the Sunday Item they would not be permitted to handle the evening States. Defendants, on the other hand, asserted that certain vendors who sold both the States and the Item had not been according the former fair and equal treatment in sales and distribution, and that such vendors had been given the alternatives of according both newspapers the same treatment or ceasing the sale of one or the other. I think the evidence bears out defendants. The so-called Sunday edition of the Item can scarcely be termed a Sunday newspaper. It is true that it contains comics and feature sections which do not appear in the week-day editions. The Item publishes no Saturday edition under that name, but the Sunday edition is printed from approximately 9 o'clock A.M. to 4 o'clock P.M. each Saturday, and bears the dateline of the succeeding Sunday. Only on rare occasions are special editions containing late Saturday afternoon news put out. Thus, the Item appears on the newsstands on Saturdays, along with the States, and is in

competition with the States all day Saturday, until late afternoon or early evening, when the first edition of the Times-Picayune appears. The defendants were entirely within their rights in requiring a choice of the offered alternatives.

[fol. 1920] The Contention of the Government That the Defendants Operated the Evening States at a Loss

Considerable evidence was offered by the Government in an effort to establish that the defendants maintained a rate structure which, considered as a whole, resulted in the operations of the evening States at a loss. The defendant corporation's net profit from its operations during 1948 and 1949 averaged more than $2,000,000.00, but the Government contended that during this period and into 1950 the States was operating at a loss. The Company's records carried a break-down of revenues and expenses as between the Times-Picayune, morning and Sunday, as a unit, and the States as a unit. Allocations were made of revenues, advertising and circulation, as between the two papers. Allocations were also made of most of the expense items. The Government contended, however, that in certain departments expenses were only partially allocated, or not allocated at all. On the books of the corporation, the States showed substantial profits for the years 1947 through 1950. It is conceded by defendants that the defendant corporation solely for the convenience of its management made allocations as between the two newspapers on an arbitrary basis of "80-20", 80% of the expenses being allocated to the Times-Picayune, morning and Sunday, and 20% to the States, evening.

In reports to the management of the defendant corporation, its auditing firm, Haskins and Sells, referred to the method of allocating expenses followed by the defendant corporation, and suggested that if it were desired that the Company's records reflect separately the net income of the Times-Picayune and the New Orleans States, consideration be given by the management to the advisability of a study to determine the basis of proper allocation of all operating expenses. The resident partner of Haskins and Sells testified, however, that his firm had no reason to believe

[fol. 1921] that any basis of allocation resulting from such a study would disclose that the States was operating at a loss.

The Government's chief complaint was that certain expense items were not allocated as between the defendant corporation's two newspapers, but were charged to the corporation generally. The evidence shows that not only did the corporation not allocate certain expenses but that in determining profits the Company did not allocate many items of general income, such as interest on investments, dividends on stock, profits from sale of capital assets, etc. The management was satisfied with the method of allocation employed, and was interested in the net result of the defendant corporation's operations. I find nothing in the evidence which would indicate, much less establish, that the States at any time was operated at a loss.

[fol. 1922] Applicability of the Sherman Act

I am convinced that the defendants, except defendant Donald W. Coleman, who had no connection with the adoption or enforcement of the unit rule, have violated Section 1 of the Sherman Act. Publishing, as it does, two separate and distinct newspapers, the defendant corporation's general and classified advertising contracts which compel an advertiser in one of its newspapers to contract for an equal amount of space in its other newspaper, effect tying-in sales. With respect to such sales, the Supreme Court in Standard Oil Company (Calif.) vs. United States, 337 U.S. 293, 305-6 (1949), said:

> "Tying agreements serve hardly any purpose beyond the suppression of competition * * *. In the usual case only the prospect of reducing competition would persuade a seller to adopt such a contract and only his control of the supply of the tying device, whether conferred by patent monopoly or otherwise obtained, could induce a buyer to enter one. See Miller, Unfair Competition, 199 et seq. (1941); Note, 49 Col. L. Rev. 241, 246 (1949). The existence of market control of the tying device, therefore, affords a strong foundation for the presumption that it has been or probably will be used to limit competition in the tied product also".

The corporation is able to enforce the unit rate only because of the dominant position which the Times-Picayune, the tying product, occupies in New Orleans and in the New Orleans trading area. The Times-Picayune, because of its monopoly position, has been able to force buyers of advertising space to purchase what they do not want, space in the States, in order to obtain what they require, space in the Times-Picayune. The very fact that the defendant corporation was able successfully to impose the unit rate on general and classified advertising tends to prove the monopoly position which the Times-Picayune enjoys. In the case [fol. 1923] of *United States vs. Pullman Company*, 50 F. Supp. 123, 132, in speaking of certain practices of the defendant, the court said:

> "They do tend to show that a concern which is able to impose such conditions has a monopolistic control of its market, and that whatever concession its customers obtain becomes a matter of grace from the monopolist, and not from the pressure of free competition."

It is doubtless true as defendants contended that one reason for the establishment of the unit rate was to increase the revenue of the defendant corporation. However, it is apparent from the record that it was also the intention of the defendants, except the defendant Coleman, to restrain general and classified advertisers from making untrammelled choice between the afternoon newspapers in purchasing advertising space, and also to substantially diminish the competitive vigor of the Item, the States' only competitor in the afternoon field. As one defendant put it, one purpose of the rate was to "attempt to slow the Item down."

Section 1 of the Sherman Act condemns contracts in restraint of trade, as well as combinations and conspiracies. Restraint of trade, as that term is used in Section 1 of the Act, includes restraint of competition. In *Paramount Famous Corporation vs. United States*, 282 U. S. 30, 43 (1930), the Court said:

> "Congress has so legislated as to prevent resort to practices which unduly restrain competition, or unduly obstruct the free flow of such commerce, and private choice of means must yield to the national authority

thus exerted. Eastern States Lumber Assn. vs. United States, supra (234 U. S. 600 (1912) 613)."

Contracts or combinations which foreclose competitors from a substantial market or from a substantial part of a market restrain trade within the meaning of the Sherman [fol. 1924] Act. The Sherman Act condemns the foreclosure of competitors. In *United States vs. General Motors Corporation*, 121 F. 2d 376, 403 (C.C.A. 7, 1941) cert. denied 314 U. S. 618, 1941, the court said:

> "... the theory in back of the Sherman law is to protect the free movement of goods in interstate commerce against unreasonable restraints, to assure open interstate markets where traders may freely negotiate sales, and to preserve the normal competitive forces which otherwise might operate in these markets."

The defendants contended that the establishment of the unit rate on classified and general advertising was a customary and legitimate method of increasing the defendant corporation's revenue. They contended that any restraint which may have resulted was that which normally and inevitably occurs whenever one competitor takes business from another, and that consequently the restraint, if any, was not unreasonable within the intendment of the Statute.

With respect to ascertaining the standard by which it is to be determined what restraints are reasonable and what are unreasonable, the Court in *United States vs. Trenton Potteries*, 273 U. S. 392, 397 (1927), said:

> "Reasonableness is not a concept of definite and unchanging content. Its meaning necessarily varies in the different fields of the law, because it is used as a convenient summary of the dominant considerations which control in the application of legal doctrines. Our view of what is a reasonable restraint of commerce is controlled by the recognized purpose of the Sherman Law itself. Whether this type of restraint is reasonable or not must be judged in part at least in the light of its effect on competition, for whatever difference of opinion there may be among economists as to the social and economic desirability of an unrestrained competi-

> tive system, it cannot be doubted that the Sherman Law and the judicial decisions interpreting it are based upon the assumption that the public interest is best protected from the evils of monopoly and price control by the maintenance of competition."

[fol. 1925] Thus it will be seen that the effect of the restraint on competition is the important question in determining reasonableness. For the restraint to be unreasonable it is not necessary that it eliminate all or substantially all competition. If this were not true, only total monopolization would be unlawful under the Act.

The evidence discloses that a substantial portion of the market is restrained by the unit rule. It was shown that defendant corporation's general advertising contracts affect 58% of all general advertisers in the New Orleans market. This includes those general advertisers who in 1949 used the morning and one of the two evening newspapers (33.4%), the Times-Picayune (22.7%), and the States only (2%). Breaking the figures down further, it is found that 23.7% used the Times-Picayune and the States in 1949. Although these advertisers selected the Times-Picayune and the States voluntarily before the adoption of the unit rate, they should be included in ascertaining the effect of the rate, for the reason that although in the past they may have used both the Times-Picayune and the States, it does not necessarily follow that they will continue to prefer the States over the Item. But even disregarding this 23.7% of advertisers, there would still remain approximately 35% of all advertising accounts in 1949 in New Orleans newspapers which were affected by the adoption of the unit rate on general advertising. This can hardly be termed insubstantial.

I think it clear that the Supreme Court has not limited its condemnation of tying clauses to sales tying an unpatented to a patented product. In the *Standard Oil* Case, *supra*, it will be noted that the court stated:

> ". . . in the usual case only the prospect of reducing competition would persuade a seller to adopt such a contract, and only his control of the supply of tying device, whether conferred by patent monopoly or other-

wise obtained could induce a buyer to enter one" (Emphasis supplied).

[fol. 1926] In the case of *United States* v. *Griffith*, 334 U.S. 100 107 (1948), a case which did not involve patents or copyrights, the Court said:

> "A man with a monopoly of theatres in any one town commands the entrance for all films into that area. If he uses that strategic position to acquire exclusive privileges in a city where he has competitors, he is employing his monopoly power as a trade weapon against his competitors."

It is thoroughly settled that the businesses of the defendant corporation and its competitor form a part of interstate commerce. In *Lorain Journal Co.* v. *United States*, 72 S.Ct. 181, 185, the Court said:

> "There can be little doubt today that the immediate dissemination of news gathered from throughout the nation or the world by agencies specially organized for that purpose is a part of interstate commerce. Associated Press v. United States, 326 U.S. 1, 14, 65 S.Ct. 1416, 1421, 89 L.Ed. 2013; Associated Press v. National Labor Relations Board, 301 U.S. 103, 57 S.C 650, 81 L.Ed. 953. The same is true of national advertising originating throughout the nation and offering products for sale on a national scale. The local dissemination of such news and advertising requires continuous interstate transmission of materials and payments, to say nothing of the interstate commerce involved in the sale and delivery of products sold. . . ."

[fol. 1927] The Attempt to Monopolize

The Government contended that the defendants have used the dominant position of the Times-Picayune to exclude competition from a substantial part of the market involved in the publication and circulation of newspapers in New Orleans, and that defendants' attempt to monopolize has consisted of both the intent to exclude and the actual ex-

clusion of their competitor, the Item, from a substantial part of this market.

The Government in this connection contended that the intent and the effect have been shown by (1) their purchase of the competing States in 1933; (2) their adoption of the unit rate for classified advertising in 1935; (3) their operation of the States, evening, at a loss since 1948, while making profits from the operations of the Times-Picayune, morning and Sunday; (4) their adoption of the unit rate on general advertising; (5) their interference with distribution of their remaining competitor's newspapers for 1949-1950. I reject the Government's contentions with respect to the defendant corporation's purchase of the competing States in 1944; the alleged operation of the States, evening, at a loss since 1948, and the interference with distribution of defendants' competitor's newspapers in 1949 and 1950. No interferences that may reasonably be drawn from the evidence support those contentions. The Government has utterly failed to prove that the purchase of the States in 1933 was a part of a course of conduct which had as its purpose an attempt to monopolize. The sale of the States was broached by the Ewing family, its then owners. The terms of the sale, from which the Government seeks to have the Court draw inferences of unlawful intent, were legal and customary. It was only natural that defendants, intelligent and experienced business men that they are, would seek to protect themselves by conditions such as are found in their contract with the [fol. 1928] States' owners. Of course, legal means may sometimes be used to attain illegal ends, but that was not the case with respect to the purchase of the States.

The Government's contentions regarding the operation of the States at a loss, and the interference with the Item's news vendors have already been discussed, and no purpose will be served by repeating those discussions. It is sufficient here to say that the evidence convinces me that the States was not operated at a loss, and that the so-called interference with the Item's news vendors formed no part of an attempt by the defendants to monopolize.

I am satisfied that the evidence with respect to the exaction of the unit rate for classified advertising and gen-

eral advertising, and the effects thereof, establishes a violation of Section 2 of the Act by all of the defendants except the defendant Donald W. Coleman.

In *American Tobacco Co.* v. *United States*, 66 S.Ct., 1125 (1946) the Court approved a charge of the district court which stated:

> "Now the term 'monopolize' in the phrase 'attempt to monopolize' means the employment of methods, means, and practices which would, if successful, accomplish monopolization, and which, though falling short, nevertheless approached so close as to create dangerous probability of it, which methods, means and practices are so employed by the members of and pursuant to a combination or conspiracy formed for the purpose of such accomplishment.",

and the Court stated:

> "To support the verdicts it was not necessary to show power and intent to exclude all competitors, or to show a conspiracy to exclude all competitors. The requirement stated to the jury and continued in the statute was only that the offenders shall 'monopolize any part of the trade or commerce among the several States, or with foreign nations.'"

Defendants, other than Coleman, by the use of the unit rate device, attempted to monopolize that segment of the afternoon newspaper general and classified advertising field which was represented by those advertisers who also required morning newspaper space and who could not be [fol. 1929] cause of budgetary limitations or financial inability purchase space in both afternoon newspapers. This was clearly an attempt to monopolize a part of trade or commerce among the several states, within the meaning of the Statute.

In *Lorain Journal Co.* v. *United States, supra*, the Court said:

> "To establish this violation of § 2 as charged, it was not necessary to show that success rewarded appellants' attempt to monopolize. The injunctive relief under § 4 sought to forestall that success. While

appellants' attempt to monopolize did succeed insofar as it deprived WEOL of income, WEOL has not yet been eliminated. The injunction may save it. '(W)hen that intent (to monopolize) and the consequent dangerous probability exist, this statute (the Sherman Act), like many others, and like the common law in some cases, directs itself against that dangerous probability as well as against the completed-result.' Swift & Co. vs. United States, 196 U.S. 375, 396, 25 S.Ct. 276, 279, 49 L.Ed. 518. See also, American Tobacco Co. v. United States, 328 U.S. 781, 66 S.Ct. 1125, 90 L.Ed. 1575; United States v. Aluminum Co., 2 Cir., 148 F.2d. 416,431."

And in the *American Tobacco Company* Case, *supra,* the Court said:

"In order to fall within § 2, the monopolist must have both the power to monopolize, and the intent to monopolize. To read the passage as demanding any 'specific' intent, makes nonsense of it, for no monopolist monopolizes unconscious of what he is doing. U.S. v. Aluminum Co. of America, 2 Cir., 148 F.2d. 416."

The Government is entitled to relief as against all of the defendants except Donald W. Coleman, and the suit will be dismissed as to him.

Findings of fact and conclusions of law will be submitted in accordance with Rule 2(d) of this Court; and the Government will submit a proposed form of decree.

New Orleans, Louisiana, May 27th, 1952.

(Sgd.) Herbert W. Christenberry, United States District Judge.

[fol. 1930] In United States District Court

(Title omitted)

Findings of Fact—Filed July 1, 1952

1. Each of the individual defendants is an inhabitant of the New Orleans Division of the Eastern District of Louisiana.

2. Defendant The Times-Picayune Publishing Company is a corporation organized under and existing by virtue of the laws of the State of Louisiana. It transacts and has its only place of business in the city of New Orleans, Louisiana, within the New Orleans Division of the Eastern District of Louisiana.

3. Defendant L. K. Nicholson at all times from early in the year 1935 to date has been the President of The Times-Picayune Publishing Company.

4. Defendant John F. Tims, Jr. is First Vice-President and has been since 1923 General Manager of The Times-Picayune Publishing Company.

5. Defendant Aubrey F. Murray has been Advertising Director of The Times-Picayune Publishing Company since 1933 or 1934.

6. Defendant Donald W. Coleman is Fifth Vice-President and has been during the past fifteen years Circulation Manager of The Times-Picayune Publishing Company.

[fol. 1931] 7. The Times-Picayune Publishing Company (hereinafter called the defendant corporation) has published in New Orleans, continuously since prior to 1933, a morning and Sunday newspaper (the daily morning editions having been known as the Times-Picayune, and the Sunday editions having been known since 1933 as the Times-Picayune-New Orleans States) which is in general circulation in the city of New Orleans, and elsewhere in the State of Louisiana, and in other states of the United States. During the period from July 1941 until March 1950, the Company published and distributed and sold the only Sunday newspaper published in New Orleans.

8. The Times-Picayune, morning, New Orleans States, evening, and The Times-Picayune-New Orleans States, Sunday, are printed at and distributed from the building of The Times-Picayune Publishing Company in the City of New Orleans, where that Company owns, maintains and operates printing presses, linotypes and all other equipment necessary to the printing and circulation of newspapers. The majority of the officers, department heads, mechanical superintendents, pressmen and other employees of the Publishing Company devote their time to the printing, publication and circulation of both of said newspapers, and for

such purpose the offices, other space and presses and virtually all equipment are used on both papers.

9. A newspaper known as The New Orleans States was published prior to 1933 as an evening newspaper by The Daily States Publishing Company, Ltd. On July 17, 1933, the defendant corporation purchased from the Daily States Publishing Company, Ltd., the name, good will and circulation of The New Orleans States (hereinafter called the States), its contracts with advertisers, and also its contracts and rights to be furnished news, features, and comics. The contract of purchase provided that the vendors would not engage in the newspaper publishing business in the New Orleans area for a period of ten years thereafter; that the vendors would not for a period of nine months thereafter sell any part of their machinery or equipment to any purchaser located in the New Orleans area, and that in [fol. 1932] any sale of any part of the machinery or equipment to any person, there should be included an agreement on the part of said person that the machinery or equipment would not be used by it or its assigns in the New Orleans area within nine months from the date of the contract; and that the vendors for a period of nine months would not sell any part of the machinery or equipment without first offering it to the defendant corporation. Since said purchase, the defendant corporation has published the States as an evening newspaper of general circulation in New Orleans and elsewhere in the State of Louisiana, and in other states of the United States. The purchase of the States in 1933 was not a part of a course of conduct which had as its purpose an attempt to monopolize.

10. At no time did The Times-Picayune Publishing Company operate the New Orleans States at a *financial* loss. At no time did any of the defendants or any of the officers or agents of the Publishing Company devise, execute or carry out any plan or scheme whereby losses in the New Orleans States, through the sale of advertising at low rates, would be absorbed by profits derived by The Times-Picayune Publishing Company in the publication of its morning newspaper.

11. The circulation practices of the defendants in connection with news vendors formed no part of any plan or scheme to injure or restrain any competitor.

12. The Times-Picayune (morning and Sunday) and the States (evening) are published by the defendant corporation as two separate and distinct newspapers. These newspapers reach separate groups of readers; are produced, in part, by separate organizations; have separate news, feature and editorial content, have an entirely different and distinctive make-up and appearance, and have been treated as separate newspapers by the defendants.

13. The New Orleans Item (hereinafter called the Item) is a newspaper of general circulation, published by The Item Company in the evening, Monday through Friday, with a Sunday issue which comes out on Saturday. The Item competes with the newspapers published by the defendant corporation. It is published in New Orleans, and is in general circulation in New Orleans and elsewhere in the State of Louisiana and in other states of the United [fol. 1933] States. The Item appears on the newsstands on Saturdays, along with the States, and is in competition with the States all day Saturday, until late afternoon or early evening, when the first edition of the Times-Picayune appears.

14. The Times-Picayune, States, and Item are the only significant newspaper media published in New Orleans for the dissemination of news, advertising, and other information to residents of New Orleans.

15. The Times-Picayune is the dominant newspaper of New Orleans and its trading territory. It is the only morning newspaper of general daily circulation published in New Orleans and there are no other daily morning newspapers circulated in New Orleans which compete with it for local and national advertising in the morning field. In each of the years 1949 and 1950 its circulation was equal to the combined circulation of both the States and the Item. For at least twenty years, the Times-Picayune has been the largest newspaper in New Orleans in circulation, advertising lineage, and number of pages published.

16. The newspaper publishing field in New Orleans is open to anyone desiring to engage in the newspaper publishing business in the City of New Orleans. There are features, news services, editorial assistance, labor and supplies available for the operation of competing newspapers

in addition to those already engaged in the business within the City of New Orleans.

17. Newspaper advertisers who desire to cover the New Orleans market must of necessity use the Times-Picayune as a medium for their advertising.

18. Advertising in New Orleans newspapers is commonly divided into three principal categories, namely: classified, general (sometimes called national), and local display (sometimes called retail).

19. The defendant corporation at all times since March, 1935, has required advertisers using classified advertisements to agree to purchase, and to purchase, such advertisements in the Times-Picayune and the States as a unit, at unit or combination rates, and has refused to sell such ad- [fol. 1934] vertising in the morning or evening newspapers separately, except for advertising from a small area across the river from New Orleans, known as "over-the-river" classified advertising. The "over-the-river" classified advertising represents such a very small part of the total classified as to be relatively unimportant.

20. In 1924 the Morning Tribune, published as a morning paper, and The Item, published as an evening paper by The Item Company, Ltd., established unit combination rates for classified advertising and continued such rates in effect until 1941 when the publication of the Morning Tribune was discontinued. At the time that The Times-Picayune Publishing Company adopted the unit rate structure for classified advertising in 1935, a large number of other publishing companies, publishing morning and evening newspapers, had such a rate structure on classified advertising.

21. In 1934, one year prior to the adoption of the unit rate on classified advertising, and while the States was under the ownership of the defendant corporation, the States carried less than one-half the number of lines of such advertising carried by the Times-Picayune. By 1936, after one year of the unit rate, the classified lineage of the States had risen to a par with that of the Times-Picayune. This result was inevitable, since in order to obtain lineage in the Times-Picayune it was necessary for a classified advertiser to take a similar amount of lineage in the States. During the ensuing fifteen years, up to and including 1950,

the spread between the lineage in each of the two newspapers, and that of the Item, steadily increased. In 1950, classified advertising lineage carried by the Times-Picayune and by the States approximated four and one-half million lines each, or more than double the lines carried by the Item. In 1934 the States carried 35% of the classified advertising lineage in the evening field. By 1950 it carried 68% of such lineage.

22. A major portion of this increase in lineage in the States resulted from the use of the compulsory unit rate. Since the adoption of the compulsory unit rate many classified advertisers are required by the defendant corporation to purchase space in the States which they do not want. Some of these classified advertisers would place advertising in the Item except for the compulsory unit rate.

[fol. 1935] 23. From 1933 to 1940, general advertisers were afforded an opportunity to purchase advertising space in the Times-Picayune and the States separately, but were given the benefit of an optional combination or unit rate for advertisements carried in both papers, the combination rate being lower than the sum of the individual rates for each newspaper.

24. A new unit rate for national advertising was adopted by the defendant corporation on June 1, 1940. It was optional and continued in effect, with some changes in details, for ten years. Under this arrangement, the defendant corporation required advertisers, in order to obtain a reduced rate on general advertising in excess of 10,000 lines in its daily papers, to contract to purchase, and to purchase, such advertisements in excess of 10,000 lines in both the Times-Picayune and the States, or in a combination of either the Times-Picayune or the States with the Times-Picayune-New Orleans States.

25. The defendant corporation issued a new general rate card effective February 1, 1950, in which it required general advertisers to purchase general advertising in the Times-Picayune (daily only), and in the States (daily only), as a unit at combination rates, and refused to sell such advertising in each newspaper separately. The rate card also provided that general advertising could be purchased in combination of morning and Sunday or evening and Sun-

day. At that time, profits from the Times-Picayune, before general and administrative expenses, were increasing while those from the States were decreasing.

26. At the time that The Times-Picayune Publishing Company announced the unit rate on general advertising in 1949, approximately 180 publishers, constituting the vast majority of the publishers publishing morning and evening newspapers, were using unit combination rates.

27. The successful operation of newspapers requires that the revenue derived from their advertising and circulation (accounting for approximately 98 per cent of the total revenues of newspapers in New Orleans) be compensatory. [illegible] receive general advertising for its two papers, defendants compete to some extent with other newspapers and other national advertising media, including radio, television, magazines, billboards, etc. in New Orleans and elsewhere.

[fol. 1936] 28. The unit rate on general advertising resulted in an increase of more than 30% in 1950 over 1949 in such lineage in the States. During the four years preceding the introduction of the unit rate the Times-Picayune carried in excess of 50% more general display advertising than the States or the Item. Following the establishment of the forced unit rate, general display lineage carried by the States rose sharply. Within several months, after unexpired contracts had been completed, the lineage of the States equalled that of the Times-Picayune. In the meantime, such lineage in the Item showed a slight gain. The States secured a commanding lead over the Item in the general display field after it had the advantage of the unit rate, and not until then.

29. National advertising expenditures are budgeted, and only a limited amount is placed in newspapers in any one city. A great number of advertisers use only one morning and one afternoon newspaper, and some advertisers completely abandoned use of the daily Item, while others reduced their lineage in that newspaper, as a result of the forced unit rate on general advertising. Some advertisers increased their general advertising lineage in the States, or added the States to their schedule involuntarily as a result of the unit rate. Some general advertisers bought space in the States which they would not have purchased in

either afternoon paper, while others bought space in the States which they would have purchased in the Item absent the forced unit rate.

30. The defendant corporation's general advertising contracts now in use affect 58% of all general advertisers in the New Orleans market. This is a substantial portion of the market. It includes those general advertisers who in 1949 used the morning and one of the two evening newspapers (33.4%), the Times-Picayune only (22.7%), and the States only (2%).

31. The intention of the defendants (except the defendant Coleman) in adopting the forced unit rates on all general and classified advertising was to restrain general and classified advertisers from making an untrammeled choice between the States and the Item in purchasing advertising space, and also to substantially diminish the competitive vigor of the Item. The Times-Picayune Publishing Company is able to enforce the unit rate only because of the dominant position which the Times-Picayune, the tying product, occupies in New Orleans and the New Orleans trading area.

[fol. 1937] 32. Since 1935, the defendant corporation in connection with contracts for local display advertising has provided that any advertiser contracting for lineage in the Times-Picayune would be billed for any advertising in the States during the period of contract at the States' rates, but based upon the lineage contracted for in the Times-Picayune. From 1938 to 1946 the defendant Corporation offered retail advertisers a reduction of one cent a line on all advertising carried in both the Times-Picayune and the States, provided the identical copy was placed in each newspaper. In 1946, the one cent reduction was abandoned, but the offer of a reduced-rate to States advertisers, based upon the amount of lineage contracted for in the Times-Picayune, was continued. The effect of these inducements was to draw some advertising from the Item to the States. At least since 1950 an advertiser contracting for lineage in the New Orleans States was allowed to purchase advertising in the Times-Picayune at rates for the Times-Picayune equivalent to the contract rate for the New Orleans States plus one cent per line.

33. A substantial amount of news, features, comics, cartoons, syndicated columns, and other information is gathered from all parts of the United States and other countries, and is distributed and delivered by various means in interstate and foreign commerce to the publishers of the Times-Picayune, the States and the Item in New Orleans, Louisiana. These newspapers distribute and disseminate this news and other information to persons in New Orleans, elsewhere in the State of Louisiana, and also to persons outside the State by truck, airplane, railroads and the United States mail.

34. The daily and Sunday average circulation before adjustments in 1950 in Louisiana and outside Louisiana for the newspapers published in New Orleans are:

	In Louisiana	In States other than Louisiana
Times-Picayune (morning)	169,147	19,255
States (evening)	99,131	6,104
Item (evening)	108,256	6,404
Times-Picayune-States (Sunday)	245,496	41,982
Item (Sunday)	88,156	13,371

[fol. 1938] 35. The defendant corporation, in arranging for advertisements in its newspapers, causes a continuous flow in interstate commerce of substantial amounts of advertising copy, mats, cuts, contracts and checks between the advertisers and the newspaper publisher. The same is true as to The Item Company. The newspapers published by The Times-Picayune Publishing Company and The Item Company distribute and disseminate such advertising to persons in New Orleans and elsewhere in Louisiana, and also to persons outside the State.

36. Substantial amounts of newsprint paper, ink and other materials are manufactured in various places in the United States and foreign countries, and are shipped in interstate commerce to The Times-Picayune Publishing Company and The Item Company for use in the publication of their newspapers.

37. Newspaper advertising is essential, or at least help-

ful, in developing, maintaining and extending a market for the sale of goods and services. A large variety and substantial amounts of goods and services produced and distributed by persons located in the various states of the United States, other than Louisiana, are advertised and offered for sale in Louisiana by means of advertisements published in the Times-Picayune, the States and the Item. Sales of such products and services are made in interstate commerce to purchasers in New Orleans and vicinity as a result of advertisements published in these newspapers, and sales of other such products and services are made in interstate commerce to purchasers in states other than the State of Louisiana as a result of advertisements in these newspapers by advertisers located in New Orleans.

38. The defendant L. K. Nicholson determines the operating policies of the defendant corporation and supervises the whole company operation. He personally participated in the conferences leading up to the adoption of the unit rate for general advertising.

39. The defendant John F. Tims, Jr., confers with defendant Nicholson in the determination of operating policies and assists him in the general supervision of business of the defendant corporation. Defendant Tims prepared the general rate card which adopted the unit rate for general advertising in 1950 and attended the conferences leading up to its adoption.

[fol. 1939] 40. The defendant Aubrey F. Murray supervises all the advertising departments of the defendant corporation and was consulted by the defendant Tims in the preparation of the general advertising rate cards.

41. Defendant Donald W. Coleman had no connection with the adoption or the enforcement of the unit rates.

Dated: July 1, 1952.

(s) Herbert W. Christenberry, United States District Judge.

[fol. 1940] IN UNITED STATES DISTRICT COURT

[Title omitted]

CONCLUSIONS OF LAW—Filed July 1, 1952

1. The Court has jurisdiction of the subject matter hereof and of each of the defendants, and the complaint states a cause of action against the defendants, except the defendant Coleman, under the provisions of the Act of July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies", as amended, commonly known as the Sherman Act.

2. The general and classified advertising contracts of the defendant The Times-Picayune Publishing Company imposing compulsory unit rates have been and now are in unreasonable restraint of trade and commerce among the several states.

3. The defendant The Times-Picayune Publishing Company has violated and is now violating Section 1 of the Sherman Act by entering into and adhering to the aforesaid contracts.

4. The defendants L. K. Nicholson, JOhn F. Tims, Jr. and Aubrey F. Murray have violated and are now violating Section 1 of the Sherman Act by forming and effectuating, for and on behalf of the defendant The Times-Picayune Publishing Company, the aforesaid contracts.

[fol. 1941] 5. The defendant The Times-Picayune Publishing Company has violated and is now violating Section 2 of the Sherman Act by engaging in an attempt to monopolize a part of the trade and commerce among the several states.

6. The defendants L. K. Nicholson, John F. Tims, Jr. and Aubrey F. Murray have violated and are now violating Section 2 of the Sherman Act by forming and effectuating for and on behalf of the defendant The Times-Picayune Publishing Company the aforesaid contracts.

7. Defendant Donald W. Coleman has not participated in the aforesaid violations of Section 1 or Section 2 of the Sherman Act.

Dated: July 1, 1952.

(s) Herbert W. Christenberry, United States District Judge.

[fol. 1942] IN UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA, NEW ORLEANS DIVISION

Civil Action No. 2797

UNITED STATES OF AMERICA, Plaintiff,

v.

THE TIMES-PICAYUNE PUBLISHING COMPANY, L. K. NICHOLSON, John F. Time, Jr., Aubrey F. Murray, and Donald W. Coleman, Defendants

FINAL JUDGMENT—Filed July 1, 1952

Plaintiff, United States of America, filed its complaint on June 14, 1950. The defendants filed their answers to said complaint on September 27, 1950. This cause came on for trial April 30, 1951, and trial was completed May 17, 1951, and final arguments were heard on July 12, 1951. The Court filed its opinion May 27, 1952, and on July 1, 1952, filed its findings of fact and conclusions of law, finding and adjudging the defendants, except defendant Donald W. Coleman, to have violated Sections 1 and 2 of the Sherman Act.

Now therefore, it is hereby Ordered, Adjudged and Decreed as follows:

I

Defendant Donald W. Coleman has not participated in the Violation of Section 1 or Section 2 of the Sherman Act as alleged in the complaint, and the complaint be and is hereby dismissed as to Donald W. Coleman.

II

This judgment shall go into effect thirty (30) days from the date it becomes final.

[fol. 1943]

III

The provisions of this final judgment applicable to the defendant, The Times-Picayune Publishing Company, shall apply to such defendant, its officers, agents, servants, employees, attorneys, subsidiaries, successors, and assigns,

and to any other person, firm, or corporation acting or claiming to act through, under the control of, or for such defendant.

IV

A. The general and the classified advertising contracts of the defendant, The Times-Picayune Publishing Company, imposing compulsory unit rates have been and now are in unreasonable restraint of trade and commerce among the several states in violation of Section 1 of the Act of Congress of July 2, 1890, 26 Stat. 209, 15 U.S.C. Sec. 1, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies"; and commonly known as the Sherman Act.

B. The defendant, The Times-Picayune Publishing Company, has violated and is now violating Section 1 of the Sherman Act by entering into and adhering to the aforesaid advertising contracts.

C. The defendant, The Times-Picayune Publishing Company, has violated and is now violating Section 2 of the Sherman Act by engaging in an attempt to monopolize a part of trade and commerce among the several states.

V

Defendant, The Times-Picayune Publishing Company, is enjoined and restrained from, directly or indirectly:

A. Offering to sell, contracting to sell, or selling advertising space in any newspaper published by it only upon the condition, expressed or implied, that the purchaser of such space will contract for or purchase advertising space in any other newspaper published by it.

[fol. 1944] B. Refusing to contract to sell or refusing to sell advertising space separately in each newspaper published by said defendant.

C. Using the dominant position of the defendant, The Times-Picayune Publishing Company, in the morning field, to sell any newspaper advertising at rates lower than those approximating either (1) the cost of producing and selling such advertising or (2) comparable newspaper advertising rates in New Orleans;

Provided that the rates for the sale of general, classified

and local display newspaper advertising initially adopted by the defendant, The Times-Picayune Publishing Company, after this judgment becomes final, shall with due notice to the office of the Attorney General be presented by said defendant to this Court for approval under the terms of this Section V of this Final Judgment, and subsequent rate cards may thereafter be presented for approval.

[fol. 1945]

VI

Defendant The Times-Picayune Publishing Company is ordered and directed to:

A. Notify promptly all advertisers now carrying advertising space in any newspaper published by it that it will contract to sell and sell advertising space in any of its newspapers at rates, terms, and conditions in compliance with Section V of this final judgment.

B. Advise promptly in writing all officers, advertising agents, advertising solicitors and all other employees in its advertising departments of the terms of this judgment and that each and every such person is subject to the provisions of this judgment; and it shall make readily available to such persons a copy of this final judgment and shall inform them of such availability.

VII

For the purpose of securing compliance with this judgment, and for no other purpose, any duly authorized representative or representatives of the Department of Justice shall, upon written request of the Attorney General or an Assistant Attorney General, and on notice to the defendant, The Times-Picayune Publishing Company, reasonable as to time and subject matter made to its principal office and subject to any legally recognized privilege, be permitted:

A. Access during the office hours of said defendant to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of said defendant relating to any matters contained in this judgment;

B. Subject to the reasonable convenience of said defendant and without restraint or interference from de-

fendants, to interview officers or employees of said defendant, who may have counsel present, regarding such matters;

Provided, however, that no information obtained by the means provided in this Section shall be divulged by the Department of Justice to any person other than a duly authorized representative of such Department, except in the course of legal proceedings in which the United States is a party, or as otherwise required by law.

[fol. 1946] VIII

Jurisdiction of this cause is retained for the purpose of enabling any of the parties to this judgment to apply to the Court at any time for such further orders and directions as may be necessary or appropriate in relation to the construction of, or carrying out of this judgment, for the amendment or modification of any of the provisions thereof, or the enforcement of compliance therewith and for the punishment of violations thereof.

IX

Judgment is entered against the defendant, The Times-Picayune Publishing Company, for all costs to be taxed in this proceeding.

Dated: July 1, 1952.

(s) Herbert W. Christenberry, United States District Judge.

[fol. 1947] In United States District Court

[Title omitted]

Petition for Appeal—Filed July 30, 1952

Considering themselves aggrieved by the final decree and judgment of this Court entered on July 1, 1952, The Times-Picayune Publishing Company, E. K. Nicholson, John F. Tims, Jr., and Aubrey F. Murray, defendants herein, do hereby pray that an appeal be allowed to the Supreme Court of the United States from said final decree and judg-

ment and from each and every part thereof; that citation be issued in accordance with law; that an order be made with respect to the appeal bond to be given by said defendants, that a supersedeas be granted pending the final disposition of this appeal, and that the amount of security be fixed by the order allowing the appeal, and that the material parts of the record, proceedings and papers upon which said final judgment and decree was based duly authenticated be sent to the Supreme Court of the United States in accordance with the rules in such case made and provided.

Respectfully submitted, (s) Charles E. Dunbar, Jr., (s) Ashton Phelps, (s) Henry N. Ess, (s) James C. Wilson, Counsel for defendants-appellants.

[fol. 1948] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER ALLOWING APPEAL—Filed July 30, 1952

Defendants The Times-Picayune Publishing Company, L. K. Nicholson, John F. Tims, Jr., and Aubrey F. Murray having made and filed their petition praying for an appeal to the Supreme Court of the United States from the final judgment and decree of this Court in this cause entered on July 1, 1952, and from each and every part thereof, and having presented their assignment of errors and prayer for reversal and their statement as to the jurisdiction of the Supreme Court of the United States on appeal pursuant to the statutes and rules of the Supreme Court of the United States in such cases made and provided,

Now, therefore, it is hereby ordered that said appeal be and the same is hereby allowed as prayed for.

It is further ordered that the amount of the appeal and supersedeas bond be and the same is hereby fixed in the sum of $1000.00 with good and sufficient surety, and shall be conditioned as may be required by law and that the judgment be suspended and stayed until the termination of this appeal.

[fol. 1949] It is further ordered that citation shall issue in accordance with law.

(s) Herbert W. Christenberry, Judge.

Dated: July 30, 1952.

[fol. 1950] Citation in usual form omitted in printing.

[fol. 1951] In United States District Court

[Title omitted]

Assignments of Errors—Filed July 30, 1952

Defendants file the following Assignments of Errors on which they will rely on their appeal to the Supreme Court of the United States from the judgment of this Court entered on the 1st day of July, 1952:

The Court erred

(1) In holding that the general and the classified advertising contracts of the defendant, The Times-Picayune Publishing Company, imposing compulsory unit rates have been and now are in unreasonable restraint of trade and commerce among the several states in violation of Section 1 of the Act of Congress of July 2, 1890, 26 Stat. 209, 15 U.S.C. Sec. 1, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," and commonly known as the Sherman Act.

(2) In holding that the defendant, The Times-Picayune Publishing Company, has violated and is now violating Section 1 of the Sherman Act by entering into and adhering to the aforesaid advertising contracts.

(3) In holding that the defendant, The Times-Picayune Publishing Company, has violated and is now violating Section 2 of the Sherman Act by engaging in an attempt to monopolize a part of trade and commerce among the several states.

(4) In holding that the defendants, L. K. Nicholson, [fol. 1952] John F. Tims, Jr. and Aubrey F. Murray, have

violated and are now violating Section 1 of the Sherman Act by forming and effectuating for and on behalf of the defendant, The Times-Picayune Publishing Company, the aforesaid advertising contracts.

(5) In holding that the defendants, L. K. Nicholson, John F. Tims, Jr. and Aubrey F. Murray, have violated and are now violating Section 2 of the Sherman Act by forming and effectuating for and on behalf of the defendant, The Times-Picayune Publishing Company, the aforesaid contracts.

(6) In enjoining and restraining the defendant, The Times-Picayune Publishing Company, from selling only as a unit and refusing to sell separately advertising space in The Times-Picayune and the New Orleans States.

(7) In enjoining and restraining The Times-Picayune Publishing Company, its officers and agents, from selling any newspaper advertising at rates lower than those approximating either (1) the cost of producing and selling such advertising, or (2) comparable newspaper advertising rates in New Orleans.

(8) In requiring the defendant, The Times-Picayune Publishing Company, to submit its initial rate cards for Court approval.

(9) In not rendering judgment in favor of all defendants, dismissing the complaint and denying all relief to the complainant.

(10) In failing to find under the undisputed evidence in the record, that the unit combination rate, if a restraint of trade, is a reasonable and justifiable restraint within the meaning of the Sherman Law.

(11) In finding or holding that the classified and general advertising contracts of The Times-Picayune Publishing Company are in unreasonable restraint of trade.

(12) In finding or holding that the classified and general advertising contracts of The Times-Picayune Publishing Company constitute any substantial restraint of trade within the meaning of the Sherman Law.

(13) In finding that The Times-Picayune is the dominant [fol. 1953] newspaper of New Orleans for the purposes of the Sherman Act.

(14) In failing to give sufficient consideration to the

entire newspaper field in New Orleans as distinguished from the so-called evening newspaper field, and to the other advertising media available to an advertiser aside from newspaper advertising.

(15) In failing to consider the lack of any dangerous probability of monopoly or of monopolization.

(16) In holding that the general and classified advertising contracts of The Times-Picayune Publishing Company involved a tie-in agreement.

(17) In finding that The Times-Picayune Publishing Company was engaged in the publication of two newspapers insofar as its advertising rates were concerned.

(18) In finding that as to the advertiser The Times-Picayune-New Orleans States was the Sunday edition of the Times-Picayune and not of the New Orleans States, which conclusion is clearly erroneous in the light of the undisputed evidence in the record.

(19) In failing to consider that The Times-Picayune Publishing Company, quoad its advertisers, is in the business of selling readers and that the basic question involved in this suit is the manner in which the volume of the daily readers of The Times-Picayune Publishing Company may be sold, as to which basic question no tie-in agreement is involved.

(20) In fixing newspaper advertising rates by Court decree in violation of "Freedom of the Press" provisions of the First Amendment of the United States Constitution.

(21) In holding that the intention of the defendants (except the defendant Coleman) in adopting the forced unit rates on general and classified advertising was to restrain, general and classified advertisers and to substantially diminish the vigor of a competitor, which conclusion is clearly erroneous in the light of the undisputed evidence in the record.

(22) In finding that The Times-Picayune Publishing [fol. 1954] Company is able to enforce the unit rate on general and classified advertising only because of the dominant position which The Times-Picayune occupies in New Orleans and the New Orleans trading area, which conclusion is clearly erroneous in the light of the undisputed evidence in the record.

(23) In finding that, in each of the years 1949 and 1950, the circulation of The Times-Picayune was equal to the combined circulation of both the States and the Item, which is clearly erroneous in the light of the undisputed evidence in the record.

(24) In finding that many classified advertisers are required by The Times-Picayune Publishing Company to purchase space in the States which they do not want, which conclusion is clearly erroneous in the light of the evidence in the record.

(25) In failing to find that general and classified advertisers were free to place as much or as little advertising with The Times-Picayune Publishing Company or with the Item as they might care to and that any budget limitations could be adjusted by increasing or decreasing the size and frequency of insertion of their advertisements.

(26) In finding that "some" advertisers were forced to place advertising in the States or were prevented from placing advertising in the Item, without indicating that the number of advertisers so affected was negligible in comparison with the total number of advertisers using New Orleans newspapers.

(27) In failing to adopt the Findings of Fact and Conclusions of Law submitted by the defendants.

(28) In adopting the Conclusions of Law submitted by the plaintiff and in adopting certain of the Findings of Fact submitted by the plaintiff to which defendants formally objected, being Findings of Fact 7, 9, 12, 15, 17, 19, 21, 22, and 28 through 32.

Respectfully submitted, (s) Charles E. Dunbar, Jr., (s) Ashton Phelps, (s) Henry N. Ess, (s) James C. Wilson, Counsel for Defendants-Appellants.

[fols. 1955-1956] STATEMENT DIRECTING ATTENTION TO PARAGRAPH 3 OF RULE 12—Filed July 30, 1952

STATEMENT REQUIRED BY PARAGRAPH 2 RULE 12 OF THE RULES OF THE SUPREME COURT OF THE UNITED STATES.

[Omitted in printing]

[fol. 19 7] Certificate of Service of Notice of Appeal—Filed August 4th, 1952

Certificate of Service of Notice of Appeal

[Omitted in printing]

[fols. 1958-1959] Motion To Have Original Records in the District Court Transmitted to the Clerk of the Supreme Court of the United States, as a Part of the Record Upon Appeal.

[Omitted in printing]

[fol. 1960] In United States District Court

[Title omitted]

Order That Original Records Be Forwarded to Supreme Court—Filed August 4, 1952

In accordance with the provisions of the praecipe herein, and pursuant to the motion to transmit the original record on appeal of the above-entitled cause to the Supreme Court of the United States;

It is hereby ordered, that the documents and paper received in evidence in the District Court in the trial of this cause and the stenographer's transcript of the proceedings held before this Court in the above entitled cause may all be forwarded, in lieu of copies of such documents and papers, to the Clerk of the Supreme Court of the United States as a part of the transcript of the record on the appeal herein.

Dated: July 30th, 1952.

(s) Herbert W. Christenberry, United States District Judge.

[fol. 1961] IN UNITED STATES DISTRICT COURT

[Title omitted]

PRAYER FOR RELIEF—Filed August 4, 19[illegible]

Defendants, The Times-Picayune Publishing Company, L. K. Nicholson, John F. Tims, Jr., and Aubrey F. Murray, in consideration of the Order Allowing Appeal and Supersedeas, the Statement as to Jurisdiction and the Assignments of Errors, respectfully pray that the judgment of United States District Court for the Eastern District of Louisiana be reversed as to said defendants and that a judgment be rendered in favor of said defendants dismissing plaintiff's suit and, for such other relief as the court may deem fit and proper.

(s) Charles E. Dunbar, Jr., (s) Ashton Phelps, (s) Henry N. Ess, (s) James C. Wilson, Counsel for Defendants-Appellants.

[fols. 1962-1963] Supersedeas Bond on appeal for $1000.00 approved and filed July 30, 1952 omitted in printing.

[fols. 1964-1965] PRAECIPE [Omitted in printing]

[fol. 1966] IN UNITED STATES DISTRICT COURT

[Title omitted]

PLAINTIFF'S PROPOSED FINAL JUDGMENT

Pursuant to the Court's direction in its opinion dated May 27, 1952, plaintiff submits herewith its proposed final judgment.

Copies of this proposed final judgment were today mailed, airmail, to Ashton Phelps, Esq., Tenth Floor, United Fruit Building, New Orleans, Louisiana, attorney for the defendants.

June 16, 1952.

(s) Victor H. Kramer, (s) Horace L. Flurry, (s) Baddia J. Rashid, (s) Fred D. Turnage, Attorneys for Plaintiff.

[fol. 1967] FINAL JUDGMENT

Plaintiff, United States of America, filed its complaint on June 14, 1950. The defendants filed their answers to said complaint on September 27, 1950. This cause came on for trial April 30, 1951, and trial was completed May 17, 1951. The Court filed its opinion May 27, 1952, and on June ——, 1952 filed its findings of fact and conclusions of law, finding and adjudging the defendants, except defendant Donald W. Coleman, to have violated Sections 1 and 2 of the Sherman Act.

Now therefore, it is hereby Ordered, Adjudged and Decreed as follows:

I

Defendant Donald W. Coleman has not participated in the violation of Section 1 or Section 2 of the Sherman Act as alleged in the complaint, and the complaint be and is hereby dismissed as to Donald W. Coleman.

II

This final judgment shall go into effect 30 days from the date of its entry, except Section I which shall go into effect immediately.

[fol. 1968] III

The provisions of this final judgment applicable to any defendant, shall apply to such defendant, its officers, agents, servants, employees, attorneys, subsidiaries, successors, and assigns, and to any other person, firm, or corporation acting or claiming to act through, under the control of, or for such defendant.

IV

A. The general and the classified advertising contracts of the defendant The Times-Picayune Publishing Company have been and now are in unreasonable restraint of trade and commerce among the several states in violation of Section 1 of the Act of Congress of July 2, 1890, 26 Stat. 209, 15 U.S.C. Sec. 1, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies", and commonly known as the Sherman Act.

B. The defendant The Times-Picayune Publishing Com-

pany has violated and is now violating Section 1 of the Act of Congress of July 2, 1890, 26 Stat. 209, 15 U.S.C. Sec. 1, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies", commonly known as the Sherman Act, by entering into and adhering to the aforesaid advertising contracts.

C. The defendants L. K. Nicholson, John F. Tims, Jr., and Aubrey F. Murray have violated and are now violating Section 1 of the Sherman Act by forming and effectuating for and on behalf of the defendant The Times-Picayune Publishing Company, the aforesaid contracts.

D. The defendants the Times-Picayune Publishing Company, L. K. Nicholson, John F. Tims, Jr., and Aubrey F. Murray have violated and are now violating Section 2 of the Sherman Act by engaging in an attempt to monopolize a part of trade and commerce among the several states.

[fol. 1969]

V

Defendants The Times-Picayune Publishing Company, L. K. Nicholson, John F. Tims, Jr., and Aubrey F. Murray are jointly and severally enjoined and restrained from, directly or indirectly:

A. Except as provided in sub-section VD of this final judgment, offering to sell, contracting to sell, or selling advertising space in any newspaper published by the defendants or any of them upon the condition, agreement, or understanding, expressed or implied, that the purchaser of such space will contract for or purchase advertising space in any other newspaper published by the defendants or any of them.

B. Refusing to contract to sell or refusing to sell advertising space separately in each newspaper published by the defendants or any of them at a rate for such space separate from any rate for the same, or approximately the same, amount of advertising space of the same class in any other newspaper published by the defendants or any of them.

C. Entering into, adhering to or claiming any right under any contract, agreement, or understanding for the sale of advertising space in any single newspaper where such space is not sold in combination with advertising space in

any other newspaper published by the defendants or any of them, the rate for which is based upon or determined by the volume of advertising space to be purchased or purchased in any other newspaper published by the defendants or any of them.

D. Entering into, adhering to or claiming any right under any contract, agreement, or understanding for the sale of advertising space in more than one newspaper published by the defendants or any of them, the combined rate for which is:

1. During a period of 3 years following the effective date of this final judgment, lower than the sum of the rates for the same amount of advertising space when purchased separately in each of the newspapers published by defendants or any of them which is included in the combined rate, or

2. After a period of 3 years following the effective date of this final judgment, lower than the sum of the [fol. 1970] rates for the same amount of advertising space when purchased separately in each of the newspapers published by the defendants or any of them which is included in the combined rate, minus such amount as the defendants or any of them can show represents savings in costs to the publisher or publishers resulting from the production and sale of such advertising in combination.

E. Using the dominant position of the defendant The Times-Picayune Publishing Company in New Orleans and its trading territory to induce advertisers to purchase advertising space in any newspaper published by defendants or any of them by selling such space at rates which do not bear a reasonable relation to the cost of producing and selling such space.

VI

Defendants The Times-Picayune Publishing Company, L. K. Nicholson, John F. Tims, Jr., and Aubrey F. Murray are jointly and severally ordered and directed to:

A. Within 30 days, notify all advertisers now carrying advertising space in any newspaper published by the de-

fendants or any of them that the defendants will contract to sell and sell advertising space in any of the defendants' newspapers at rates, terms, and conditions in compliance with Section V of this final judgment.

B. Within 30 days, advise in writing all officers, advertising agents, advertising solicitors and all other employees in the advertising department of the defendant The Times-Picayune Publishing Company of the terms of this judgment and that each and every such person is subject to the [fol. 1971] provisions of this judgment; and the defendants shall make readily available to such persons a copy of this final judgment and shall inform them of such availability.

VII

For the purpose of securing compliance with this judgment, and for no other purpose, any duly authorized representative or representatives of the Department of Justice shall, upon written request of the Attorney General or an Assistant Attorney General, and on notice to the defendants reasonable as to time and subject matter made to the principal office of the defendant The Times-Picayune Publishing Company or any other advertising medium owned or controlled by any of them, and subject to any legally recognized privilege, be permitted:

A. Access during the office hours of said defendants to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of said defendants relating to any matters contained in this judgment.

B. Subject to the reasonable convenience of said defendants and without restraint or interference from defendants, to interview officers or employees of said defendants, who may have counsel present, regarding such matters, provided, however, that no information obtained by the means provided in this Section shall be divulged by the Department of Justice to any person other than a duly authorized representative of such Department, except in the course of legal proceedings in which the United States is a party, or as otherwise required by law.

VIII

Jurisdiction of this cause is retained for the purpose of enabling any of the parties to this judgment to apply to the [fol. 1972] Court at any time for such further orders and directions as may be necessary or appropriate in relation to the construction of, or carrying out of this judgment, for the amendment or modification of any of the provisions thereof, or the enforcement of compliance therewith and for the punishment of violations thereof.

IX

Judgment is entered against the defendants for all costs to be taxed in this proceeding.

Dated: ——, ——.

——, United States District Judge.

[fol. 1973] In United States District Court

[Title omitted]

Petition for Appeal—Filed August 29, 1952

The United States of America, plaintiff in the above entitled cause, considering itself aggrieved by the final judgment and decree of this Court entered on the 1st day of July, 1952, does hereby pray an appeal from said final judgment and decree to the Supreme Court of the United States. Pursuant to Rule 12 of the Rules of the Supreme Court, the plaintiff presents to this Court herewith a statement showing the basis of jurisdiction of the Supreme Court to entertain an appeal in this cause.

The particulars wherein the plaintiff considers the judgment erroneous are set forth in the Assignment of Errors and Prayer for Reversal accompanying this petition and to which reference is hereby made.

Plaintiff prays that its appeal may be allowed and that a citation be issued as provided by law, that a transcript of the record, proceedings, and documents upon which said final judgment and decree was based, duly authenti-

[fol. 1974] cated, be sent to the Supreme Court of the United States under the Rules of said Court in such cases made and provided.

Dated: August 27, 1952.

(s) Newell A. Clapp, Acting Assistant Attorney General, (s) Victor H. Kramer, (s) Horace L. Flurry, (s) Baddia J. Rashid, Special Assistants to the Attorney General.

[fol. 1975] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER ALLOWING APPEAL—Filed August 29, 1952

In the above entitled cause the United States of America, plaintiff, having made and filed its petition praying an appeal to the Supreme Court of the United States from the final judgment and decree of this Court in this cause entered on the 1st day of July, 1952, and having also made and filed its Assignment of Errors and Prayer for Reversal, and Statement of Jurisdiction, and having in all respects conformed to the statutes and rules in such cases made and provided.

It is therefore ordered and adjudged:

That the appeal be and the same is hereby allowed as prayed for.

Dated: August 28th, 1952.

(s) Herbert W. Christenberry, United States District Judge.

[fol. 1976] IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENT OF ERRORS AND PRAYER FOR REVERSAL—Filed August 29, 1952

The United States of America, plaintiff in the above entitled cause, in connection with its petition for appeal to

the Supreme Court of the United States, hereby assigns error to the record and proceedings and the entry of the final decree in the District Court on July 1, 1952, in the above entitled cause and says that in the entry of the final decree the District Court committed error to the prejudice of the plaintiff in the following particulars:

1. The Court erred in not including in its judgment a provision corresponding to that of Section V C of the decree proposed by the plaintiff.

2. The Court erred in not including in its judgment provisions corresponding to those of Section V D of the decree proposed by the plaintiff.

Wherefore, plaintiff prays that the final decree of the District Court may be reversed to the extent that it is inconsistent with the errors herein assigned by the [fol. 1977] plaintiff, and for such other and fit relief as the Court may deem just and proper.

Dated: August 27, 1952.

(s) Newell A. Clapp, Acting Assistant Attorney General, (s) Victor H. Kramer, (s) Horace L. Flurry, (s) Baddia J. Rashid, Special Assistants to the Attorney General.

[fols. 1978-1979] STATEMENT REQUIRED BY PARAGRAPH 2 OF THE RULES OF THE SUPREME COURT OF THE UNITED STATES.

[Omitted in printing]

[fol. 1980] CERTIFICATE OF SERVICE OF NOTICE OF APPEAL AND CITATION OF APPEAL

[Omitted in printing]

[fol. 1981] Citation in usual form omitted in printing.

[fol. 1982-1983] PRAECIPE [Omitted in printing]

[fol. 1984] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 1985] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION FOR EXTENSION OF TIME WITHIN WHICH TO FILE RECORD—Filed September 11, 1952

Defendants-Appellants petition the Court, pursuant to Rule 11(1) of the Rules of the Supreme Court of the United States, that the time within which the record in the above matter shall be filed with the Clerk of the Supreme Court of the United States be extended from September 8, 1952 to October 8, 1952 for the reason that the Clerk of this Honorable Court has not been able to assemble the record in proper form for transmission within the time originally specified.

New Orleans, Louisiana, September 4, 1952.

(s) Charles E. Dunbar, Jr., (s) Ashton Phelps, (s) Henry N. Ess, (s) James C. Wilson, Counsel for Defendants-Appellants.

ORDER

The foregoing motion considered, it is hereby ordered, adjudged and decreed that the return day for filing the [fols. 1986-1988] record in the above matter with the Clerk of the Supreme Court of the United States be extended from September 8, 1952 to October 8, 1952, in accordance with Rule 11 of the Rules of the Supreme Court of the United States.

New Orleans, Louisiana, September 5, 1952.

(s) Herbert W. Christenberry, United States District Judge.

CERTIFICATE OF SERVICE

[Omitted in printing]

[fol. 1989] IN SUPREME COURT OF THE UNITED STATES

No. 374

THE TIMES-PICAYUNE PUBLISHING COMPANY, L. K. NICHOLSON, John F. Tims, Jr., Aubrey F. Murray and Donald W. Coleman, Appellants,

v.

UNITED STATES OF AMERICA, Appellee.

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION OF PARTS OF RECORD TO BE PRINTED—Filed October 16, 1952.

a. Appellants adopt for their statement of points upon which they intend to rely in their appeal to this Court the points contained in their Assignment of Errors heretofore filed.

b. Appellants designate the entire record herein for printing by the Clerk of this Court, except that the following may be omitted:

1. All of that portion of the transcript of testimony commencing with line 7 on page 867 and ending with line 16 on page 937.

2. All of that portion of the transcript of testimony commencing with line 1 on page 1098 and ending with line 18 on page 1102.

3. All of that portion of the transcript of testimony commencing with line 1 on page 1651 and ending with line 23 on page 1703.

[fol. 1990] 4. Exhibits G-6, G-7, G-8, G-14 to G-156 inclusive, D-1, D-2, D-4, D-17, D-18, D-19, D-23 and D-24.

Charles E. Dunbar, Jr., Ashton Phelps, Henry N. Ess, James C. Wilson, Counsel for Appellants.

[fols. 1991-1993] PROOF OF SERVICE

[Omitted in printing]

[fol. 1994] IN SUPREME COURT OF THE UNITED STATES

No. 375

UNITED STATES OF AMERICA, Appellant

v.

THE TIMES-PICAYUNE PUBLISHING COMPANY, L. K. NICHOLSON, John F. Tims, Jr., Aubrey F. Murray and Donald W. Coleman, Appellants.

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION OF PARTS OF RECORD TO BE PRINTED—Filed October 21, 1952

1. Appellant adopts for its statement of points upon which it intends to rely in its appeal to this Court the points contained in its Assigament of Errors heretofore filed.

2. In addition to those parts of the record herein already designated by the appellees in their appeal to this Court in No. 374, appellant designates for printing by the Clerk of this Court Exhibits G-6 to G-8 inclusive, G-14 to G-71 inclusive, G-80 to G-110 inclusive, G-112 to G-124 inclusive, G-125A, G-126, G-141, G-142, G-144 to G-149 inclusive, and G-152 to G-156 inclusive; and that part of the record in No. 375, as filed in this Court, covered by items (7), (8), (9), (11) and (15) of appellant's praecipe to the Clerk of the United States District Court for the Eastern District of Louisiana.

Dated: October 21, 1952.

Robert L. Stern, Acting Solicitor General.

[fols. 1995-1997] CERTIFICATE OF SERVICE

[Omitted in printing]

[fol. 1998] SUPREME COURT OF THE UNITED STATES

[Title omitted]

ORDER NOTING PROBABLE JURISDICTION—Filed November 10, 1952

The statements of jurisdiction in these cases having been submitted and considered by the Court, probable jurisdiction is noted. The cases are consolidated for argument, each side to be allowed one hour.

LIBRARY
SUPREME COURT, U. S.

Vol. III

EXHIBITS

TRANSCRIPT OF RECORD

(Pages 1285 to 1644)

Supreme Court of the United States

OCTOBER TERM, 1952

No. 374

THE TIMES-PICAYUNE PUBLISHING COMPANY, L. K. NICHOLSON, JOHN F. TIMS, JR., ET AL., APPELLANTS,

vs.

UNITED STATES OF AMERICA

No. 375

UNITED STATES OF AMERICA, APPELLANT,

vs.

THE TIMES-PICAYUNE PUBLISHING COMPANY, L. K. NICHOLSON, JOHN F. TIMS, JR., ET AL.

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA

FILED OCTOBER 3, 1952

Probable jurisdiction noted November 10, 1952

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. 374

THE TIMES-PICAYUNE PUBLISHING COMPANY, L. K. NICHOLSON, JOHN F. TIMS, JR., ET AL., APPELLANTS,

vs.

UNITED STATES OF AMERICA

No. 375

UNITED STATES OF AMERICA, APPELLANT,

vs.

THE TIMES-PICAYUNE PUBLISHING COMPANY, L. K. NICHOLSON, JOHN F. TIMS, JR., ET AL.

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA

VOL. III

INDEX

EXHIBITS—GOVERNMENT

	Original	Print
Record from U.S.D.C. for the Eastern District of Louisiana, New Orleans Division—Continued		
G-6 thru 8—Financial statement of The Times Picayune Publishing Company for years ending December 31, 1947, 1948, 1949, prepared by Haskins and Sells	1999	1284
G-14—Letter dated April 1, 1947 from Roland Ladreyt to T. A. Lambert, Gebhardt Chili Powder Co.	2022	1297
G-15—Letter dated August 8, 1949 from Roland Ladreyt to I. L. Grant, National Biscuit Co.	2023	1298
G-16—Letter dated September 12, 1949 from Roland Ladreyt to M. J. Brennan, Kinsey Distillery Corp.	2026	1301

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JAN. 12, 1953.

—5440

EXHIBITS—GOVERNMENT

Record from U.S.D.C. for the Eastern District of Louisiana, New Orleans Division—Continued	Original	Print
G-17—Letter dated November 26, 1949 from Roland Ladreyt to Frank Quinn, Standard Sales Co.	2028	1303
G-18—General rate card of The New Orleans Times-Picayune effective February 15, 1933	2030	1305
G-19 & 20—Pages 94 from Standard Rate and Data Service, dated August, 1935 and September, 1935	2032	1307
G-21 thru 29—General advertising rate card of The Times-Picayune Publishing Co. for years 1938, 1940, 1942, 1943, 1944, 1946, 1947, 1948, 1949	2034	1309
G-30—Office memorandum dated January 31, 1947 from Roland Ladreyt to Messrs. Murray, Swayze, Charlton, Display Desk, T. J. Adams, E. Kuhn, R. Muller	2052	1327
G-31—Letter dated October 21, 1949 from Roland Ladreyt to Jann & Kelley, Inc., with attachments	2053	1328
G-32—Letter dated January 17, 1950 from Roland Ladreyt to Jann & Kelley, Inc. enclosing a copy of advertising report.	2061	1336
G-33—Announcement of rate card issued December 1, 1949 to advertising agencies	2064	1339
G-34—General advertising rate card of The Times-Picayune Publishing Company effective February 1, 1950	2065	1340
G-35—Letter dated December 2, 1949 from Foote, Cone & Belding to Roland Ladreyt	2067	1342
G-36—Letter dated December 8, 1949 from Al Paul Lefton Co. to Roland Ladreyt	2068	1343
G-37—Letter dated December 9, 1949 from J. D. Tarcher & Co. to Roland Ladreyt	2069	1344
G-38—Letter dated December 16, 1949 from Roland Ladreyt to Jann & Kelley, Inc.	2070	1345
G-39—Letter dated December 22, 1949 from Jann & Kelley to Roland Ladreyt	2071	1346
G-40—Letter dated December 28, 1949 from Roland Ladreyt to Jann & Kelley, Inc.	2072	1348
G-41—Letter dated January 12, 1950 from Roland Ladreyt to Jann & Kelley, Inc.	2073	1349
G-42—Letter dated February 28, 1950 from Roland Ladreyt to Jann & Kelley, Inc.	2075	1350
G-43—Letter dated March [illegible] 1950 from Nelson R. Swayze to Frank R[illegible]a	2076	1351
G-44—Letter dated March 30, 1950 from W. R. Benefield to Lester Barnett	2078	1353

EXHIBITS—GOVERNMENT

Record from U.S.D.C. for the Eastern District of Louisiana, New Orleans Division—Continued	Original	Print
G-45—Memorandum dated November 26, 1949 from Vincent J. Kelley to all the offices of Jann & Kelley	2080	1355
G-46—Letter dated December 1, 1949 from Jann & Kelley, Inc. to John F. Tims, Jr.	2083	1358
G-47—Letter dated April 12, 1950 from Jann & Kelley, Inc. to John F. Tims, Jr.	2086	1361
G-48—Representatives Report, General Advertising Department, dated April 7, 1951 re Kaiser-Frazer Corporation	2088	1363
G-49—Memorandum dated November 17, 1949 from Jann & Kelley, Inc. to Roland Ladreyt	2090	1365
G-50—Memorandum dated January 26, 1950 from Jann & Kelley, Inc. to Roland Ladreyt	2091	1366
G-51—Letter dated March 3, 1950 from Jann & Kelley, Inc. to Roland Ladreyt	2092	1367
G-52—Copy of advertisement which appeared in Editor and Publisher Market Guide, 1950 edition	2094	1369
G-53—Copy of advertisement from the New Orleans States of November 4, 1949	2095	1370
G-54—Copy of advertisement from the New Orleans States of October 31, 1949	2096	1371
G-55—Copy of advertisement from the Times-Picayune of January 17, 1951 issue	2097	1372
G-56—Copy of advertisement from The Times-Picayune New Orleans States, October 9, 1949 issue	2098	1373
G-57—Copy of advertisement from the New Orleans States of November 3, 1951 issue	2099	1374
G-58—Copy of advertisement from the New Orleans States of February 22, 1951 issue	2100	1375
G-59—Copy of advertisement from the New Orleans States of November 10, 1949 issue	2101	1376
G-60—Office memorandum dated April 7, 1938 from Aubrey F. Murray to Mr. Tims	2102	1377
G-61—Office memorandum dated April 15, 1938 from John F. Tims, Jr. to Messrs. Adams, Davis & Muller	2103	1378
G-62—Office memorandum dated April 15, 1938 from John F. Tims, Jr. to Messrs. Blackburn, Murray, Swayze and Muller	2104	1379
G-63—Letter dated February 4, 1939 from The Times-Picayune Publishing Co. to Mr. Grover Rothenburg	2105	1380
G-64—Office memorandum dated September 2, 1939 from Fred Torres to Aubrey Murray	2107	1382

EXHIBITS—GOVERNMENT

Record from U.S.D.C. for the Eastern District of Louisiana, New Orleans Division—Continued	Original	Print
G-65—Letter dated September 5, 1939 from Aubrey F. Murray to Mr. G. V. Rothenburg	2108	1383
G-66—Office memorandum dated March 8, 1948 from John F. Tims, Jr. to Messrs. Murray, Ladreyt, Charlton, Swayze and Stephens	2109	1384
G-67—Office memorandum dated April 6, 1949 from R. E. Gough to Aubrey F. Murray	2110	1385
G-68—Letter dated July 12, 1948 from Aubrey F. Murray to the Jann & Kelley, Inc., Atlanta office	2111	1386
G-69—Letter dated November 19, 1949 from Aubrey F. Murray to Mr. Marcel J. Voorhies	2112	1387
G-70—Letter dated March 8, 1950 from Jann & Kelley, Inc. to A. F. Murray	2113	1388
G-71—Office memorandum dated April 18, 1950 from Aubrey F. Murray to John F. Tims, Jr.	2116	1391
G-80—The Times-Picayune Local Classified Fixed Space Contract effective February 1, 1933	2117	1392
G-81—The Times-Picayune New Orleans States Local Classified Gold Bond Contract effective March 15, 1935	2118	1393
G-82—The Times-Picayune New Orleans States Local Classified Real Estate Contract effective March 15, 1935	2119	1394
G-83—The Times-Picayune New Orleans States Local Classified Fixed Space Contract effective March 15, 1935	2120	1395
G-84—The Times-Picayune New Orleans States Local Classified Real Estate Contract, effective March 1, 1950	2121	1396
G-85—New Orleans States Sunday Times-Picayune New Orleans States "Over The River", Classified Contract, effective March 1, 1950	2123	1398
G-86—The Times-Picayune New Orleans States Local Classified Fixed Space Contract, effective March 1, 1950	2125	1400
G-87—The Times-Picayune New Orleans States Local Classified Gold Bond Contract effective March 1, 1950	2127	1402
G-88 thru 92—Retail Display Open Space Contract Rate Cards of The Times-Picayune Publishing Co. effective May 1, 1937, October 1, 1941, June 1, 1943, January 1, 1949 and March 1, 1950	2129	1404
G-93 & 94—Publisher's Statements—The Times-Picayune (Morning) and States (Evening) for six months ending September 30, 1950	2135	1410

EXHIBITS—GOVERNMENT

Record from U.S.D.C. for the Eastern District of Louisiana, New Orleans Division—Continued	Original	Print
G-95—Letter dated March 18, 1941 from John F. Tims, Jr. to Mr. C. C. Covey, National Stores Corp.	2139	1414
G-96—Office memorandum dated April 6, 1938 from L. F. Blackburn to John F. Tims, Jr.	2141	1416
G-97—Office memorandum dated April 4, 1938 from Nelson R. Swayze to John F. Tims, Jr.	2142	1417
G-98—Letter dated January 13, 1940 from John F. Tims, Jr. to Joseph Trexler, Edison Bros. Stores, Inc.	2144	1419
G-99—Letter dated December 8, 1949 from Jann & Kelley, Inc. to John F. Tims, Jr.	2145	1420
G-100—Letter dated November 30, 1949 from Foote, Cone & Belding to Jann & Kelley, Inc.	2148	1423
G-101—Contract dated August 15, 1941 with International Paper Sales Company, Inc.	2149	1424
G-102—Letter dated January 11, 1950 from Jann & Kelley, Inc. to John F. Tims, Jr.	2152	1427
G-103—Copy of the War Production Board verbatim transcript of meeting, Appeal Board, Times-Picayune Publishing Co. dated November 20, 1944, etc.	2154	1429
G-104 & 105—General rate cards of the Times-Picayune Publishing Co. effective May 1, 1948 and July 1, 1949	2174	1443
G-106A & B—Chart and data sheet of Classified Advertising Lineage carried by Times-Picayune, etc.	2176	1445
G-107 A & B—Chart and data sheet of General Display Advertising Lineage carried by Times-Picayune, etc.	2180	1449
G-108A & B—Chart and data sheet of Percentage of Total General display advertising lineage in evening New Orleans newspapers, etc.	2182	1451
G-109A & B and 110A & B—Charts and data sheets for 1949 and 1950 of Distribution of Total number of general display advertising accounts, etc.	2184	1453
G-112 & 113—Agreements for afternoon membership and morning membership in the Associated Press dated April 15, 1948	2186	1457
G-114—Contract by Times-Picayune Publishing Company with International News Service dated August 5, 1949	2190	1459
G-115—Contract with Chicago Times Syndicate, Inc. for feature, etc.	2191	1460

EXHIBITS—GOVERNMENT

Record from U.S.D.C. for the Eastern District of Louisiana, New Orleans Division—Continued	Original	Print
G-116—Agreement with N.E.A. Feature Service for use of material, etc.	2192	1461
G-117 thru 121—Service contracts with United Features Syndicate for specified features, etc.	2194	1463
G-122—Contract between Hearst Corporation for the feature, etc.	2199	1468
G-123—Agreement with the Register and Tribune Syndicate for wire report, etc.	2200	1469
G-124—Memorandum dated May 3, 1950 from George W. Healy, Jr. to Mr. Baddia J. Rashid	2201	1470
G-125A—Data sheet of Daily Automotive and Financial Display Advertising for 1949 and 1950, etc.	2206	1475
G-126—Report of Haskins & Sells on Recommendations for Improvement in Accounting System	2207	1477
G-141—Letter report dated June 4, 1940 from Ernst & Ernst to The Times-Picayune Publishing Co.	2215	1483
G-142—Photograph of a page from The New Orleans States for August 13, 1940 entitled "Fight"	2216	1485
G-144—Pages from issue of Times-Picayune dated July 18, 1933	2217	1486
G-145A thru 145E—Billing forms used by the Times-Picayune Publishing Co.	2220	1489
G-146 thru 148—Audit reports for the year 1949 made by the Audit Bureau of Circulations for Times Picayune (Morning) New Orleans, States, and New Orleans Item	2225	1494
G-149—Letter dated October 20, 1948 from Nelson R. Swayze to J. A. Goldsack, The Askin Stores, Inc.	2281	1550
G-152—Extract from The Times Picayune Centennial Edition dated January 25, 1937	2282	1551
G-153—Basic list of daily newspapers published in 45 various cities in January 1929, etc.	2285	1554
G-154—Basic list of newspaper cities having publications or newspapers in which advertising was sold on a unit rate basis, etc.	2298	1569
G-155 & 156—Audit reports for the year 1950 made by the Audit Bureau of Circulations for Times-Picayune, morning, Sunday Times-Picayune-New Orleans States and New Orleans States	2308	1575

EXHIBITS—DEFENDANTS

Record from U.S.D.C. for the Eastern District of Louisiana, New Orleans Division—Continued	Original	Print
D-3—List of clients of Foote, Cone & Belding	2356	1623
D-5—Chart showing how Times-Picayune Publishing Co. Employees are engaged	2359	1626
D-6—Chart showing how Times-Picayune Publishing Co. Equipment is employed	2360	1627
D-7 thru 13—Charts showing the Times-Picayune Publishing Co. Building by separate floors and their use	2361	1628
D-14—Statements of ownership, management and circulation required by Acts of Congress for the Times-Picayune, The Times-Picayune New Orleans States, New Orleans States, New Orleans Item, etc.	2368	1635
D-15—Chart showing percentage of Total General Display (National) Advertising Lineage in Sunday New Orleans newspapers	2372	1640
D-16—Data for Chart Percentage of Total General Display (National) Advertising Lineage in Sunday New Orleans newspapers, etc.	2373	1641
D-20—Statement of The Times-Picayune Publishing Company showing the income from various sources and operating departments to which it is applicable for the years 1948, 1949, 1950	2374	1642
D-21—Procedure flow chart showing present system on method of handling classified advertising, etc.	2375	1642
D-22—Procedure flow chart showing present system on method of handling general advertising, etc.	2376	1644

[fol. 1999] GOVERNMENT EXHIBIT 6

The Times-Picayune Publishing Company

Report on Examination for the Year Ended December 31, 1947

[fol. 2000] Haskins & Sells

Certified Public Accountants

Hibernia Bank Building

New Orleans 12

February 20, 1948.

The Times-Picayune Publishing Company, 615 North Street, New Orleans 4, Louisiana.

DEAR SIRS:

We have made an examination of your accounts for the year ended December 31, 1947 and present our certificate and the following financial statements:

Balance Sheet, December 31, 1947 and 1946, and Comparison (Exhibit A).

Summary of Net Income and Undivided Profits for the Years Ended December 31, 1947 and 1946, and Comparison (Exhibit B).

Statement of Profit from Operations before General and Administrative Expenses (Schedule 1).

General and Administrative Expenses (Schedule 2).

Yours truly, Haskins & Sells.

[fol. 2001] Accountants' Certificate

The Times-Picayune Publishing Company:

We have examined the balance sheet of The Times-Picayune Publishing Company as of December 31, 1947 and the related summary of net income and undivided profits for the year ended that date. Our examination was made in accordance with generally accepted auditing standards

and included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

In our opinion, the accompanying balance sheet and summary of net income and undivided profits present fairly the financial condition of the Company at December 31, 1947 and the results of its operations for the year ended that date, in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year.

Haskins & Sells.

February 20, 1948.

(Here follows 4 photolithographs, folios 2002-2005)

EXHIBIT A

THE TIMES-PICAYUNE PUBLISHING COMPANY

BALANCE SHEET, DECEMBER 31, 1947 AND 1946, AND COMPARISON

--ASSETS--	DECEMBER 31, 1947	DECEMBER 31, 1946	INCREASE DECREASE
CURRENT ASSETS:			
Cash	$ 621,306.03	$ 417,896.37	$203,409.66
United States government bonds - at cost, less amortization of bond premiums (quoted market value - 1947, $732,021.13; 1946, $963,211.35):			
Tax savings notes (not including tax notes deducted from liability for Federal taxes)	$ 10,692.50	$ 81,926.60	$ 71,234.10
Other	711,525.49	858,131.73	146,606.24
Total United States government bonds	$ 722,217.99	$ 940,058.33	$217,840.34
Accounts receivable:			
Trade (less reserve for losses - 1947, $15,000.00; 1946, $18,000.00)	$ 731,709.61	$ 674,067.11	$ 57,642.50
Employees	861.70	1,745.15	883.45
Other	21,305.35	11,571.59	9,733.76
Total accounts receivable	$ 753,876.66	$ 687,383.85	$ 66,492.81
Inventories - at cost:			
On hand:			
Newsprint	$ 291,389.04	$ 20,317.08	$271,071.96
Supplies	21,356.46	16,081.32	5,275.14
In transit - newsprint	18,112.73	16,807.14	1,305.59
Total inventories	$ 330,858.23	$ 53,205.54	$277,652.69
Total current assets	$2,428,258.91	$2,098,544.09	$329,714.82
POSTWAR REHABILITATION AND EXPANSION FUND:			
Cash	$ 29,532.84	$ 79,203.86	$ 49,671.02
United States government bonds - at cost, less amortization of premiums (quoted market value - 1947, $700,861.00; 1946, $703,310.00)	701,005.00	703,529.75	2,524.75
Total postwar rehabilitation and expansion fund	$ 730,537.84	$ 782,733.61	$ 52,195.77
CASH AND BONDS HELD IN TRUST FOR THE TIMES-PICAYUNE DOLL AND TOY AND CHRISTMAS GIFT FUNDS (see contra)		$ 59,769.50	$ 59,769.50
INVESTMENTS:			
Capital stock of subsidiary company (see note)	$ 56,000.00	$ 56,000.00	
International Paper & Power Co. common (quoted market value - 1947, $364,500.00; 1946, $361,125.00)	70,338.25	70,338.25	
Other stocks and bonds - at cost	98,925.83	32,925.83	$ 66,000.00
Total investments	$ 225,264.08	$ 159,264.08	$ 66,000.00
PROPERTY (at cost):			
Land	$ 304,017.10	$ 255,623.14	$ 48,393.96
Buildings	956,941.09	850,979.24	105,961.85
Machinery and equipment	1,546,173.02	1,276,377.18	269,795.84
Furniture and fixtures	176,159.43	147,125.91	29,033.52
Trucks	16,806.80	11,994.20	4,812.60
Total property	$3,000,097.44	$2,542,099.67	$457,997.77
Less reserve for depreciation	1,227,752.54	1,182,101.66	45,650.88
Property - net	$1,772,344.90	$1,359,998.01	$412,346.89
DEPOSITS ON CONTRACTS FOR PURCHASE OF MACHINERY AND EQUIPMENT	$ 332,652.36	$ 68,685.26	$263,967.10
FRANCHISE AND GOODWILL	$ 930,000.00	$ 930,000.00	
OTHER ASSETS:			
Carriers' routes	$ 38,530.00	$ 38,530.00	
Funds on deposit with closed bank - Hibernia Bank & Trust Co. In Liquidation (less reserve for loss, $976.00)	Nil	Nil	
Unexpired insurance premiums	41,152.22	25,019.47	$ 16,132.75
Prepaid advertising commissions	15,533.79	12,591.87	2,941.92
Other	2,025.00	10,742.07	8,717.07
Total other assets	$ 97,241.01	$ 86,883.41	$ 10,357.60
TOTAL	$6,516,299.10	$5,545,877.96	$970,421.14

--LIABILITIES--	DECEMBER 31, 1947	DECEMBER 31, 1946	INCREASE DECREASE
CURRENT LIABILITIES:			
Accounts payable - trade and miscellaneous	$ 680,461.04	$ 332,471.38	$347,989.66
Social security and income taxes withheld from employees' salaries	65,331.12	51,311.55	14,019.57
The Times-Picayune Doll and Toy and Christmas Gift Funds		5,561.41	5,561.41
Louisiana income taxes	56,000.00	53,356.27	2,643.73
Federal income taxes:			
Current year (less United States Treasury tax savings notes - 1947, $824,000.00; 1946, $695,033.40)	Nil	Nil	
Prior years	24,728.61	8,276.22	16,452.39
Accrued expenses:			
Salaries and wages	43,449.03	31,855.02	11,594.01
Advertising commissions	6,285.48	4,965.94	1,319.54
Social security taxes	12,974.53	12,168.74	805.79
Total current liabilities	$ 889,229.81	$ 499,966.53	$389,263.28
THE TIMES-PICAYUNE DOLL AND TOY AND CHRISTMAS GIFT FUNDS:			
Unexpended contributions		$ 65,330.91	$ 65,330.91
Less uninvested funds shown as a current liability		5,561.41	5,561.41
Remainder (see contra)		$ 59,769.50	$ 59,769.50
DEFERRED INCOME:			
Unexpired subscriptions	$ 54,731.96	$ 44,846.01	$ 9,885.95
Other		2,089.99	2,089.99
Total deferred income	$ 54,731.96	$ 46,936.00	$ 7,795.96
CAPITAL STOCK - Authorized, 300,000 shares of $10.00 each; issued and outstanding, 280,000 shares	$2,800,000.00	$2,800,000.00	
SURPLUS AND UNDIVIDED PROFITS:			
Surplus	$1,200,000.00	$1,200,000.00	
Undivided profits, per Exhibit B	1,572,337.33	939,205.93	$633,131.40
Total surplus and undivided profits	$2,772,337.33	$2,139,205.93	$633,131.40
TOTAL	$6,516,299.10	$5,545,877.96	$970,421.14

NOTES: The net assets of the subsidiary company at December 31, 1947 amounted to $68,818.93, or $12,818.93 in excess of the cost at which this investment is carried on the Company's books.

The Company was contingently liable at December 31, 1947 on letters of credit issued but not drawn against in the amount of $370,500.00.

THE TIMES-PICAYUNE PUBLISHING COMPANY

SUMMARY OF NET INCOME AND UNDIVIDED PROFITS
FOR THE YEARS ENDED DECEMBER 31, 1947 AND 1946, AND COMPARISON

	...YEAR ENDED DECEMBER 31... 1947	1946	INCREASE DECREASE
OPERATING REVENUES - Schedule 1:			
Advertising	$6,634,863.94	$4,920,652.42	$1,714,211.52
Circulation	3,178,759.40	2,565,731.54	613,027.86
Other	169,474.18	139,338.60	30,135.58
Total	$9,983,097.52	$7,625,722.56	$2,357,374.96
OPERATING EXPENSES - Schedule 1:			
Newsprint paper	$2,546,228.68	$1,789,541.71	$ 756,686.97
Ink	55,441.65	47,867.08	7,774.57
Roto magazine production	363,455.86	223,324.05	140,131.81
Radio station WTPS FM	60,158.37		60,158.37
Departmental expenses	3,865,554.60	3,200,287.04	665,267.56
Total	$6,890,839.16	$5,260,819.88	$1,630,019.28
PROFIT FROM OPERATIONS BEFORE GENERAL AND ADMINISTRATIVE EXPENSES	$3,092,258.36	$2,364,902.68	$ 727,355.68
GENERAL AND ADMINISTRATIVE EXPENSES - Schedule 2	927,007.08	796,938.72	130,068.36
PROFIT FROM OPERATIONS	$2,165,251.28	$1,567,963.96	$ 597,287.32
OTHER INCOME CREDITS:			
Profit on sale of capital assets		$ 2,138.79	$ 2,138.79
Profit on sale of securities	$ 19.49		19.49
Dividends on stock	28,752.50	43,049.90	14,797.40
Interest received:			
Bonds (less amortization of bond premiums - 1947, $1,909.85; 1946, $1,236.26)	30,859.81	30,155.74	704.07
Other	327.67	209.90	117.77
Refund of Federal and State income taxes - prior years		1,116.93	1,116.93
Miscellaneous	5,336.09	4,028.00	1,308.09
Total	$ 64,795.56	$ 80,699.26	$ 15,903.70
GROSS INCOME	$2,230,046.84	$1,648,663.22	$ 581,383.62
INCOME CHARGES:			
Provision for income taxes (excluding in 1946 amount applicable to profits on securities):			
Current year:			
Federal normal and surtax	$ 824,000.00	$ 593,833.40	$ 230,166.60
State of Louisiana income tax	56,000.00	40,556.27	15,443.73
Prior years - Federal income and excess profits taxes and State of Louisiana income taxes	13,248.50		13,248.50
Interest on additional income taxes	2,708.08	923.88	1,784.20
Loss on sales and abandonments of capital assets	958.86		958.86
Total	$ 896,915.44	$ 635,313.55	$ 261,601.89
NET INCOME	$1,333,131.40	$1,013,349.67	$ 319,781.73
UNDIVIDED PROFITS CREDIT - Profit on sale of securities (less Federal and State income taxes applicable thereto, $114,000.00)		302,806.93	302,806.93
UNDIVIDED PROFITS AT BEGINNING OF THE YEAR	939,205.93	683,049.33	256,156.60
GROSS UNDIVIDED PROFITS	$2,272,337.33	$1,999,205.93	$ 273,131.40
CHARGES TO UNDIVIDED PROFITS:			
Dividends	$ 700,000.00	$ 560,000.00	$ 140,000.00
Transferred to surplus account		500,000.00	500,000.00
Total	$ 700,000.00	$1,060,000.00	$ 360,000.00
UNDIVIDED PROFITS AT END OF THE YEAR	$1,572,337.33	$ 939,205.93	$ 633,131.40

Note: Figures marked "R" are in red ink.

Note: Figures marked "R" are in red ink.

12860

SCHEDULE 1

THE TIMES-PICAYUNE PUBLISHING COMPANY

STATEMENT OF PROFITS FROM OPERATIONS BEFORE GENERAL AND ADMINISTRATIVE EXPENSES
FOR THE YEARS ENDED DECEMBER 31, 1947 AND 1946, AND COMPARISON

	YEAR ENDED DECEMBER 31, 1947				YEAR ENDED DECEMBER 31, 1946			INCREASE - DECREASE			
	TOTAL	THE TIMES-PICAYUNE	NEW ORLEANS STATES	RADIO STATION WTPS FM (See Note)	TOTAL	THE TIMES-PICAYUNE	NEW ORLEANS STATES	TOTAL	THE TIMES-PICAYUNE	NEW ORLEANS STATES	RADIO STATION WTPS FM
OPERATING REVENUES:											
Advertising:											
Retail	$3,569,877.97	$2,976,613.00	$ 591,124.67	$ 2,140.30	$2,732,835.70	$2,258,989.76	$ 473,845.94	$ 837,042.27	$ 717,623.24	$117,278.73	$ 2,140.30
Classified	1,303,520.06	988,549.95	314,970.11		1,030,031.47	807,232.54	222,798.93	273,488.59	181,317.41	92,171.18	
General	1,338,555.25	1,033,335.93	304,919.92	299.40	915,158.27	709,428.55	205,729.72	423,396.98	323,907.38	99,190.20	299.40
Comic section	167,615.36	167,615.36			106,562.01	106,562.01		61,053.35	61,053.35		
Magazine section:											
Roto magazine (beginning May 1946):											
Retail	244,653.56	244,653.56			168,169.94	168,169.94		76,483.61	76,483.61		
General	206,797.61	206,797.61			85,599.24	85,599.24		121,198.37	121,198.37		
Half-tone magazine (through April 1946)					12,270.12	12,270.12		(12,270.12)	(12,270.12)		
Total	$9,831,019.80	$5,617,565.40	$1,211,014.70	$ 2,439.70	$5,050,626.75	$4,148,252.16	$ 902,374.59	$4,780,393.05	$1,469,313.24	$308,640.11	$ 2,439.70
Less:											
Discounts and allowances	$ 176,990.74	$ 155,232.28	$ 21,758.46		$ 112,033.85	$ 94,257.39	$ 17,776.46	$ 64,956.89	$ 60,974.89	$ 3,982.00	
Agent's commissions	19,165.12	18,119.84		$ 45.31	17,940.48	17,877.48	63.00	1,224.64	1,242.33	(17.69)	$ 45.31
Total	$ 196,155.86	$ 174,352.09	$ 21,758.46	$ 45.31	$ 129,974.33	$ 112,134.87	$ 17,839.46	$ 66,181.53	$ 62,217.22	$ 3,919.90	$ 45.31
Net advertising revenues	$9,634,863.94	$5,443,213.31	$1,189,256.24	$ 2,394.39	$4,920,652.42	$4,036,117.29	$ 884,535.13	$4,714,211.52	$1,407,096.02	$304,721.11	$ 2,394.39
Circulation:											
Carriers	$1,612,174.46	$1,033,491.21	$ 578,683.25		$1,252,797.10	$ 806,739.33	$ 446,057.77	$ 359,377.36	$ 226,751.88	$132,625.48	
Country news dealers	1,060,371.64	934,907.19	125,464.45		840,890.99	734,274.34	106,616.65	219,480.65	200,632.85	18,847.80	
City news dealers	385,252.22	234,030.15	151,222.07		368,118.43	210,001.20	158,117.23	17,133.79	24,028.95	(6,895.16)	
Country subscription	75,343.29	73,397.46	1,945.83		69,346.12	67,431.50	1,914.62	5,997.17	5,965.96	31.21	
Office subscription	45,617.79	39,974.03	5,643.76		35,386.07	31,237.15	4,148.92	10,231.72	8,736.88	1,494.84	
Total	$3,178,759.40	$2,315,800.04	$ 862,959.36		$2,566,538.71	$1,849,683.52	$ 716,855.19	$ 612,220.69	$ 466,116.52	$146,104.17	
Less - agents' commissions					807.17	800.45	6.72	807.17	800.45	6.72	
Net circulation revenues	$3,178,759.40	$2,315,800.04	$ 862,959.36		$2,565,731.54	$1,848,883.07	$ 716,848.47	$ 613,027.86	$ 466,916.97	$146,110.89	
Other:											
Cuts, mats, and metal sold	$ 163,725.39	$ 163,725.39			$ 132,940.62	$ 132,940.62		$ 30,784.77	$ 30,784.77		
Profit from sales of cook books and patterns	5,748.79	5,748.79			6,397.98	6,397.98		(649.19)	(649.19)		
Total other revenues	$ 169,474.18	$ 169,474.18			$ 139,338.60	$ 139,338.60		$ 30,135.58	$ 30,135.58		
Total	$9,983,097.52	$7,928,487.53	$2,052,215.60	$ 2,394.39	$7,625,722.56	$6,024,338.96	$1,601,383.60	$2,357,374.96	$1,904,148.57	$450,832.00	$ 2,394.39
OPERATING EXPENSES:											
Newsprint paper (less sales)	$2,546,228.68	$2,028,243.77	$ 517,984.91		$1,789,541.71	$1,409,663.47	$ 379,878.24	$ 756,686.97	$ 618,580.30	$138,106.67	
Ink	$ 55,441.65	$ 47,147.53	$ 8,294.12		$ 47,667.08	$ 40,580.53	$ 7,086.55	$ 7,774.57	$ 6,567.00	$ 1,207.57	
Roto magazine production	$ 363,455.86	$ 363,455.86			$ 223,324.05	$ 223,324.05		$ 140,131.81	$ 140,131.81		
Radio station WTPS FM	$ 60,158.37			$60,158.37				$ 60,158.37			$60,158.37
Departmental expenses:											
Composing room	$ 645,612.28	$ 439,729.75	$ 205,882.53		$ 492,817.20	$ 325,703.38	$ 167,113.82	$ 152,795.08	$ 114,026.37	$ 38,768.71	
Press room	208,874.04	172,489.25	36,384.79		174,361.64	144,779.41	29,582.23	34,512.40	27,709.84	6,802.56	
Stereotype room	139,165.10	100,074.89	39,090.21		109,424.36	79,247.01	30,177.35	29,740.74	20,827.88	8,912.86	
Photo engraving	124,675.90	102,202.52	22,473.38		106,578.59	87,603.07	18,975.52	18,097.31	14,599.45	3,497.86	
Mail room	149,915.98	118,971.44	30,944.54		119,269.58	94,005.08	25,264.50	30,646.40	24,966.36	5,680.04	
Maintenance	133,032.37	130,849.29	2,183.08		101,456.96	99,411.58	2,045.38	31,575.41	31,437.71	137.70	
Advertising	413,815.86	347,951.96	65,863.90		358,096.23	297,468.68	60,627.55	55,719.63	50,483.28	5,236.35	
Editorial	985,687.76	651,458.48	334,229.28		841,010.28	558,050.76	282,959.52	144,877.48	93,407.72	51,469.76	
Circulation	1,064,575.31	751,959.06	312,616.25		897,272.20	626,939.52	270,332.68	167,303.11	125,019.54	42,283.57	
Total departmental operating expenses	$3,865,554.60	$2,815,686.64	$1,049,867.96		$3,200,287.04	$2,313,208.49	$ 887,078.55	$ 665,267.56	$ 502,478.15	$162,789.41	
Total	$6,890,839.16	$5,254,533.80	$1,576,146.99	$60,158.37	$5,260,819.88	$3,986,776.54	$1,274,043.34	$1,630,019.28	$1,267,757.26	$302,103.55	$60,158.37
PROFIT (loss) FROM OPERATIONS BEFORE GENERAL AND ADMINISTRATIVE EXPENSES	$3,092,258.36	$2,673,953.73	$ 476,068.61	$(57,763.98)	$2,364,902.68	$2,037,562.42	$ 327,340.26	$ 727,355.68	$ 636,391.31	$148,728.35	$(57,763.98)

NOTE: Radio station WTPS FM began broadcasting operations in January 1947; there are no comparable revenues and expenses for the year ended December 31, 1946.

SCHEDULE 2

THE TIMES-PICAYUNE PUBLISHING COMPANY

GENERAL AND ADMINISTRATIVE EXPENSES
FOR THE YEARS ENDED DECEMBER 31, 1947 AND 1946, AND COMPARISON

	YEAR ENDED DECEMBER 31 1947	1946	INCREASE DECREASE
GENERAL:			
Officers' salaries	$124,200.00	$ 77,400.00	$ 46,800.00
Directors' fees	1,650.00	840.00	810.00
Other salaries and wages:			
Warehouse	14,084.27	15,610.92	1,526.65 R
Truck	5,120.47	4,740.13	380.34
Telephone operators	13,116.29	11,474.42	1,641.87
Promotion	8,547.37	6,356.93	2,190.44
Radio	13,399.13	22,766.05	9,366.92 R
Power and light	25,645.91	20,757.89	4,888.02
Fuel	2,524.60	2,292.17	232.43
Legal	21,871.67	12,267.52	9,604.15
Telephone and telegraph	16,383.88	14,572.48	1,811.40
Warehouse expense	4.10	2,170.61	2,166.51 R
Freight and express charges	9,420.64	5,540.81	3,879.83
Truck expense	4,840.45	8,585.40	3,744.95 R
Transportation and travel	5,923.23	3,859.47	2,063.76
Radio expense		30,919.94	30,919.94 R
Supplies	839.24	586.44	252.80
Contributions	33,985.00	25,455.00	8,530.00
Watchmen service	8,733.00	9,443.25	710.25 R
Pensions to former employees	10,010.00	10,010.00	
Payments to employees in armed forces		1,863.18	1,863.18 R
Accountants' fees	4,850.00	5,200.00	350.00 R
Dues	9,219.60	6,797.11	2,422.49
Pro rata of operating expense of American Newspaper Advertising Network	12,241.03		12,241.03
Miscellaneous	19,936.56	16,001.25	3,935.31
Total	$366,546.44	$315,510.97	$ 51,035.47
OFFICE:			
Salaries:			
Office	$113,453.58	$116,229.75	$ 2,776.17 R
Credit department	78,812.10	65,336.68	13,475.42
Auditing department	49,665.42	44,456.18	5,209.24
Stationery and supplies	8,088.85	7,611.97	476.88
Postage	7,073.37	6,110.49	962.88
Miscellaneous	2,021.89	1,417.57	604.32
Total	$259,115.21	$241,162.64	$ 17,952.57
INSURANCE	$ 71,011.90	$ 60,334.53	$ 10,677.37
TAXES:			
Real estate and personal property	$ 37,914.73	$ 36,007.10	$ 1,907.63
Louisiana corporation franchise	7,408.81	6,274.57	1,134.24
Mississippi corporation franchise	10.00	10.00	
Social security	52,868.58	43,117.34	9,751.24
City and state sales	11,642.13	8,280.65	3,361.48
Federal excise	17,987.11	15,427.98	2,559.13
Total	$127,831.36	$109,117.64	$ 18,713.72
DEPRECIATION:			
Building	$ 18,142.78	$ 15,200.88	$ 2,941.90
Equipment, furniture, and fixtures	64,023.22	47,811.63	16,211.59
Total	$ 82,166.00	$ 63,012.51	$ 19,153.49
PROVISION FOR DOUBTFUL ACCOUNTS (Less recoveries - 1947, $5,875.21; 1946, $4,531.43)	$ 20,336.17	$ 7,800.43	$ 12,535.74
TOTAL	$927,007.08	$796,938.72	$130,068.36

Note: Figures marked "R" are in red ink.

* Salaries paid to certain officers of the Company aggregating $44,837.32 in 1947 and $60,420.16 in 1946 are charged to other operating accounts.

† Represents expenses of radio station WTPS FM prior to the beginning of broadcasting in January 1947; expenses for the year ended December 31, 1947 were allocated to the respective operating and general and administrative expenses.

[fol. 2006] GOVERNMENT EXHIBIT 7

The Times-Picayune Publishing Company

Report on Examination for the Year Ended December 31, 1948

[fol. 2007] Haskins & Sells

Certified Public Accountants

Hibernia Bank Building,

New Orleans 12

March 24, 1949.

The Times-Picayune Publishing Company, 615 North Street, New Orleans 4, Louisiana.

DEAR SIRS:

We have made an examination of your accounts for the year ended December 31, 1948 and present our certificate and the following financial statements:

Balance Sheet, December 31, 1948 and 1947, and Comparison (Exhibit A).
Summary of Net Income and Undivided Profits for the Years Ended December 31, 1948 and 1947, and Comparison (Exhibit B).
Statement of Profit from Operations Before General and Administrative Expenses (Schedule 1).
General and Administrative Expenses (Schedule 2).

Yours truly, Haskins & Sells.

[fol. 2008] Accountants' Certificate

The Times-Picayune Publishing Company:

We have examined the balance sheet of The Times-Picayune Publishing Company as of December 31, 1948 and the related summary of net income and undivided profits for the year then ended. Our examination was made in accordance with generally accepted auditing standards, and accordingly included such tests of the accounting

records and such other auditing procedures as we considered necessary in the circumstances.

In our opinion, the accompanying balance sheet and summary of net income and undivided profits present fairly the financial position of the Company at December 31, 1948 and the results of its operations for the year then ended, in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year.

Haskins & Sells.

March 24, 1949.

(Here follow 4 photolithographs, folios 2009-2012)

EXHIBIT A

THE TIMES-PICAYUNE PUBLISHING COMPANY

BALANCE SHEET, DECEMBER 31, 1948 AND 1947, AND COMPARISON

--ASSETS--	DECEMBER 31, 1948	DECEMBER 31, 1947	INCREASE
CURRENT ASSETS:			
Cash	$ 518,305.19	$ 621,306.03	$103,000.84
United States government bonds - at cost, less amortization of bond premiums (quoted market value - 1948, $731,989.87; 1947, $732,027.13):			
Tax savings notes (not including tax notes deducted from liability for Federal taxes)	$ 7,205.50	$ 10,692.50	$ 3,487.00
Other	715,200.00	711,525.49	3,674.51
Total United States government bonds	$ 722,405.50	$ 722,217.99	$ 187.51
Accounts receivable:			
Trade (less reserve for losses, $15,000.00)	$ 935,498.95	$ 731,709.61	$203,789.34
Employees	2,234.93	861.70	1,373.23
Other	14,787.12	21,305.35	6,518.23
Total accounts receivable	$ 952,521.00	$ 753,876.66	$198,644.34
Inventories - at cost:			
On hand:			
Newsprint paper	$ 173,482.65	$ 291,389.04	$117,906.39
Supplies	32,909.19	21,356.46	11,552.73
In transit - newsprint paper		18,112.73	18,112.73
Total inventories	$ 206,391.84	$ 330,858.23	$124,466.39
Total current assets	$2,399,623.53	$2,428,258.91	$ 28,635.38
POSTWAR REHABILITATION AND EXPANSION FUND:			
Cash	$ 20,105.33	$ 29,532.84	$ 9,427.51
United States government bonds - at cost, less amortization of premiums (quoted market value - 1948, $501,486.25; 1947, $700,861.00)	500,446.75	701,005.00	200,558.25
Total postwar rehabilitation and expansion fund	$ 520,552.08	$ 730,537.84	$209,985.76
INVESTMENTS - At cost:			
Capital stock of subsidiary company (see note)	$ 56,000.00	$ 56,000.00	
International Paper & Power Co. common (quoted market value - 1948, $346,781.25; 1947, $364,500.00)	70,338.25	70,338.25	
Codsa River Newsprint Co. common	400,000.00	50,000.00	$350,000.00
Other stocks and bonds	42,275.83	48,925.83	6,650.00
Total investments	$ 568,614.08	$ 225,264.08	$343,350.00
PROPERTY - At cost:			
Land	$ 305,137.96	$ 304,017.10	$ 1,120.86
Buildings	981,246.18	956,941.09	24,305.09
Machinery and equipment	2,195,545.65	1,546,173.02	649,372.63
Furniture and fixtures	200,269.97	176,159.43	24,110.54
Trucks	16,778.29	16,806.80	28.51
Total property	$3,698,978.05	$3,000,097.44	$698,880.61
Less reserve for depreciation	1,339,447.05	1,227,752.54	111,694.51
Property - net	$2,359,531.00	$1,772,344.90	$587,186.10
DEPOSITS ON CONTRACTS FOR PURCHASE OF MACHINERY AND EQUIPMENT	$ 114,362.53	$ 332,652.36	$218,289.83
FRANCHISE AND GOODWILL	$ 930,000.00	$ 930,000.00	
OTHER ASSETS:			
Carriers' routes	$ 38,530.00	$ 38,530.00	
Funds on deposit with closed bank - Hibernia Bank & Trust Co. In liquidation (less reserve for loss, $976.00)	Nil	Nil	
Unexpired insurance premiums	35,072.34	41,152.22	$ 6,079.88
Prepaid advertising commissions	15,765.71	15,533.79	231.92
Other	2,025.00	2,025.00	
Total other assets	$ 91,393.05	$ 97,241.01	$ 5,847.96
TOTAL	$6,984,076.27	$6,516,299.10	$467,777.17

--LIABILITIES--	DECEMBER 31, 1948	DECEMBER 31, 1947	INCREASE
CURRENT LIABILITIES:			
Accounts payable - trade and miscellaneous	$ 679,554.10	$ 680,461.04	$ 906.94
Social security and income taxes withheld from employees' salaries	58,986.71	65,331.12	6,344.41
Louisiana income taxes	50,000.00	56,000.00	6,000.00
Federal income taxes:			
Current year (less United States Treasury tax savings notes - 1948, $740,000.00; 1947, $824,000.00)	Nil	Nil	
Prior years	12,581.48	24,728.61	12,147.13
Accrued expenses:			
Salaries and wages	22,336.04	43,449.03	21,112.99
Advertising commissions	7,387.56	6,285.48	1,102.08
Social security taxes	14,294.55	12,974.53	1,320.02
Total current liabilities	$ 845,140.44	$ 889,229.81	$ 44,089.37
DEFERRED INCOME - Unexpired subscriptions	$ 53,675.11	$ 54,731.96	$ 1,056.85
CAPITAL STOCK - Authorized, 300,000 shares of $10.00 each; issued and outstanding, 280,000 shares	$2,800,000.00	$2,800,000.00	
SURPLUS AND UNDIVIDED PROFITS:			
Surplus	$1,700,000.00	$1,200,000.00	$500,000.00
Undivided profits, per Exhibit B	1,585,260.72	1,572,337.33	12,923.39
Total surplus and undivided profits	$3,285,260.72	$2,772,337.33	$512,923.39
TOTAL	$6,984,076.27	$6,516,299.10	$467,777.17

Note: Figures marked "R" are in red ink.

NOTE: The net assets of the subsidiary company at December 31, 1948 amounted to $80,037.64, or $24,037.64 in excess of the cost at which this investment is carried on the Company's books.

2009

THE TIMES-PICAYUNE PUBLISHING COMPANY

SUMMARY OF NET INCOME AND UNDIVIDED PROFITS
FOR THE YEARS ENDED DECEMBER 31, 1948 AND 1947, AND COMPARISON

	...YEAR ENDED DECEMBER 31... 1948	1947	INCREASE DECREASE
OPERATING REVENUES - Schedule 1:			
Advertising	$ 7,780,538.64	$6,634,863.94	$1,145,674.70
Circulation	3,336,727.39	3,178,759.40	157,967.99
Other	205,797.30	169,474.18	36,323.12
Total	$11,323,063.33	$9,983,097.52	$1,339,965.81
OPERATING EXPENSES - Schedule 1:			
Newsprint paper	$ 3,527,704.17	$2,546,228.68	$ 981,475.49
Ink	69,930.95	55,441.65	14,489.30
Roto magazine production	369,333.64	363,455.86	5,877.78
Radio Station WTPS	127,581.88	60,158.37	67,423.51
Departmental expenses	4,269,100.41	3,865,554.60	403,545.81
Total	$ 8,363,651.05	$6,890,839.16	$1,472,811.89
PROFIT FROM OPERATIONS BEFORE GENERAL AND ADMINISTRATIVE EXPENSES	$ 2,959,412.28	$3,092,258.36	$ 132,846.08
GENERAL AND ADMINISTRATIVE EXPENSES - Schedule 2	1,020,035.48	927,007.08	93,028.40
PROFIT FROM OPERATIONS	$ 1,939,376.80	$2,165,251.28	$ 225,874.48
OTHER INCOME CREDITS:			
Profit on sale of securities	$ 1,138.56	$ 19.49	$ 1,119.07
Dividends on stock	37,030.00	28,252.50	8,777.50
Interest received:			
Bonds (less amortization of bond premiums - 1948, $1,073.74; 1947, $1,909.85)	33,119.42	30,859.81	2,259.61
Other	99.35	327.67	228.32
Miscellaneous	4,704.11	5,336.09	631.98
Total	$ 76,091.44	$ 64,795.56	$ 11,295.88
GROSS INCOME	$ 2,015,468.24	$2,230,046.84	$ 214,578.60
INCOME CHARGES:			
Provision for income taxes:			
Current year:			
Federal normal and surtax	$ 740,000.00	$ 824,000.00	$ 84,000.00
State of Louisiana income tax	50,000.00	56,000.00	6,000.00
Prior years - Federal income and excess profits taxes and State of Louisiana income taxes	4,208.28	13,248.50	9,040.22
Interest on additional income taxes, etc.	691.41	2,708.08	2,016.67
Loss on sales and abandonments of capital assets	145.16	958.86	813.70
Cost of plans for office building abandoned	7,500.00		7,500.00
Total	$ 802,544.85	$ 896,915.44	$ 94,370.59
NET INCOME	$ 1,212,923.39	$1,333,131.40	$ 120,208.01
UNDIVIDED PROFITS AT BEGINNING OF THE YEAR	1,572,337.33	939,205.93	633,131.40
GROSS UNDIVIDED PROFITS	$ 2,785,260.72	$2,272,337.33	$ 512,923.39
CHARGES TO UNDIVIDED PROFITS:			
Dividends	$ 700,000.00	$ 700,000.00	
Transferred to surplus account	500,000.00		$ 500,000.00
Total	$ 1,200,000.00	$ 700,000.00	$ 500,000.00
UNDIVIDED PROFITS AT END OF THE YEAR	$ 1,585,260.72	$1,572,337.33	$ 12,923.39

Note: Figures marked "R" are in red ink.

1288B

Note: Figures marked "R" are in red ink.

SCHEDULE 1

THE TIMES-PICAYUNE PUBLISHING COMPANY

STATEMENT OF PROFIT FROM OPERATIONS BEFORE GENERAL AND ADMINISTRATIVE EXPENSES FOR THE YEARS ENDED DECEMBER 31, 1948 AND 1947, AND COMPARISON

	YEAR ENDED DECEMBER 31, 1948				YEAR ENDED DECEMBER 31, 1947				INCREASE - DECREASE			
	TOTAL	THE TIMES-PICAYUNE	NEW ORLEANS STATES	RADIO STATION WTPS	TOTAL	THE TIMES-PICAYUNE	NEW ORLEANS STATES	RADIO STATION WTPS	TOTAL	THE TIMES-PICAYUNE	NEW ORLEANS STATES	RADIO STATION WTPS
OPERATING REVENUES:												
Advertising:												
Retail	$ 4,485,629.01	$3,819,910.65	$ 624,336.16	$ 41,382.20	$3,569,877.97	$2,976,613.00	$ 591,124.67	$ 2,140.30	$2,976,613.00	$ 591,124.67	$ 2,140.30	$ 915,751.04	$ 843,297.65	$ 33,211.49	$39,241.90
Classified	1,448,283.41	1,108,066.14	340,217.27		1,303,520.06	988,549.95	314,970.11		988,549.95	314,970.11		144,763.35	119,516.19	25,247.16	
General	1,469,948.55	1,112,087.85	345,129.48	12,731.22	1,338,555.25	1,033,335.93	304,919.92	299.40	1,033,335.93	304,919.92	299.40	131,393.30	78,751.92	40,209.56	12,431.82
Comic Section	163,060.49	163,060.49			167,615.36	167,615.36			167,615.36						
Roto magazine:															
Retail	180,004.25	180,004.25			244,653.55	244,653.55									
General	292,170.07	292,170.07			206,797.61	206,797.61									
Total	$8,039,095.78	$6,675,299.45	$1,309,682.91	$ 54,113.42	$6,831,019.80	$5,617,565.40	$1,211,014.70	$ 2,439.70	$5,617,565.40	$1,211,014.70	$ 2,439.70	$1,208,077.98	$1,057,724.05	$ 98,668.21	$51,673.72
Less:															
Discounts and allowances	$ 232,202.45	$ 196,288.76	$ 32,913.69		$ 176,980.74	$ 155,232.28	$ 21,758.46		$ 155,232.28	$ 21,758.46		$ 55,211.71	$ 44,056.48	$ 11,155.23	
Agents' commissions	26,354.69	24,040.59		$ 2,314.10	19,165.12	19,119.81		$ 45.31	19,119.81		$ 45.31	7,189.57	4,920.78		$ 2,268.79
Total	$ 258,557.14	$ 220,329.35	$ 32,913.69	$ 2,314.10	$ 196,155.86	$ 174,352.09	$ 21,758.46	$ 45.31	$ 174,352.09	$ 21,758.46	$ 45.31	$ 62,401.28	$ 48,977.26	$ 11,155.23	$ 2,268.79
Net advertising revenues	$ 7,780,538.64	$6,454,970.10	$1,276,769.22	$ 51,799.32	$6,634,863.94	$5,443,213.31	$1,189,256.24	$ 2,394.39	$5,443,213.31	$1,189,256.24	$ 2,394.39	$1,145,674.70	$1,008,746.79	$ 87,512.98	$49,404.93
Circulation:															
Carriers	$ 1,693,453.07	$1,092,039.89	$ 601,413.18		$1,612,174.46	$1,033,491.21	$ 578,683.25		$1,033,491.21	$ 578,683.25		$ 81,278.61	$ 58,548.68	$ 22,729.93	
Country news dealers	1,106,704.95	974,832.21	131,872.74		1,060,371.64	934,907.19	125,464.45		934,907.19	125,464.45		46,333.31	39,925.02	6,408.29	
City news dealers	415,570.85	258,874.93	156,695.92		385,252.22	234,030.15	151,222.07		234,030.15	151,222.07		30,318.63	24,844.78	5,473.85	
Country subscription	73,068.60	70,934.44	2,134.16		75,343.29	73,397.46	1,945.83		73,397.46	1,945.83		2,274.69	2,463.02	188.33	
Office subscription	47,943.92	41,463.16	6,466.76		45,617.79	39,974.03	5,643.76		39,974.03	5,643.76		2,111.13	1,489.13	823.00	
Total circulation revenues	$ 3,336,727.39	$2,438,144.63	$ 898,582.76		$3,178,759.40	$2,315,800.04	$ 862,959.36		$2,315,800.04	$ 862,959.36		$ 157,967.99	$ 122,344.59	$ 35,623.40	
Other:															
Cuts, mats and copy sold	$ 187,838.63	$ 187,838.63			$ 163,725.39	$ 163,725.39			$ 163,725.39			$ 24,113.24	$ 24,113.24		
Profit from sales of cook books and patterns	8,924.49	8,924.49			5,748.79	5,748.79			5,748.79			3,175.70	3,175.70		
Radio - miscellaneous	9,034.18			$ 9,034.18								9,034.18			$ 9,034.18
Total other revenues	$ 205,797.30	$ 196,763.12		$ 9,034.18	$ 169,474.18	$ 169,474.18			$ 169,474.18			$ 36,321.12	$ 27,288.94		$ 9,034.18
Total	$11,323,063.33	$9,086,877.85	$2,175,351.98	$ 60,833.50	$9,983,097.52	$7,928,487.53	$2,052,215.60	$ 2,394.39	$7,928,487.53	$2,052,215.60	$ 2,394.39	$1,339,965.81	$1,158,390.32	$123,136.38	$58,439.11
OPERATING EXPENSES:															
Newsprint paper (less sales)	$ 3,527,704.17	$2,854,324.99	$ 673,379.18		$2,546,228.68	$2,028,243.77	$ 517,984.91		$2,028,243.77	$ 517,984.91		$ 981,475.49	$ 826,081.22	$155,394.27	
Ink	$ 69,930.95	$ 59,704.58	$ 10,226.37		$ 55,441.65	$ 47,147.53	$ 8,294.12		$ 47,147.53	$ 8,294.12		$ 14,489.30	$ 12,557.05	$ 1,932.25	
Roto magazine production	$ 369,333.64	$ 369,333.64			$ 363,455.86	$ 363,455.86			$ 363,455.86			$ 5,877.78	$ 5,877.78		
Radio Station WTPS	$ 127,581.88			$127,581.88	$ 60,158.37			$60,158.37			$60,158.37	$ 67,423.51			$67,423.51
Departmental expenses:															
Composing room	$ 727,774.84	$ 496,501.82	$ 231,273.02		$ 645,612.28	$ 439,729.75	$ 205,882.53		$ 439,729.75	$ 205,882.53		$ 82,162.56	$ 56,772.07	$ 25,390.49	
Press room	255,628.52	209,812.86	45,815.66		208,874.04	172,489.25	36,384.79		172,489.25	36,384.79		46,754.48	37,323.61	9,430.87	
Stereotype room	164,496.20	117,645.34	46,850.86		139,165.10	100,074.89	39,090.21		100,074.89	39,090.21		25,331.10	17,570.45	7,760.65	
Photo engraving	141,610.86	116,218.01	25,392.85		124,675.90	102,202.52	22,473.38		102,202.52	22,473.38		16,934.96	14,015.49	2,919.47	
Mail room	175,655.34	140,417.38	35,237.96		149,915.98	118,971.44	30,944.54		118,971.44	30,944.54		25,739.36	21,445.94	4,293.42	
Maintenance	130,894.19	128,651.82	2,242.37		133,032.37	130,849.29	2,183.08		130,849.29	2,183.08		2,138.18	2,197.47	59.29	
Advertising	454,315.69	380,778.96	73,536.73		413,815.86	347,951.96	65,863.90		347,951.96	65,863.90		40,499.83	32,827.00	7,672.83	
Editorial	1,067,037.73	710,138.12	356,899.61		985,887.76	651,458.48	334,429.28		651,458.48	334,429.28		81,149.97	58,679.64	22,470.33	
Circulation	1,151,687.04	804,711.14	346,975.90		1,064,575.31	751,959.06	312,616.25		751,959.06	312,616.25		87,111.73	52,752.08	34,359.65	
Total departmental operating expenses	$ 4,269,100.41	$3,104,875.49	$1,164,224.96		$3,865,554.60	$2,815,686.64	$1,049,867.96		$2,815,686.64	$1,049,867.96		$ 403,545.81	$ 289,188.81	$114,357.00	
Total	$ 8,363,651.05	$6,388,238.66	$1,847,830.51	$127,581.88	$6,890,839.16	$5,254,533.80	$1,576,146.99	$60,158.37	$5,254,533.80	$1,576,146.99	$60,158.37	$1,472,811.89	$1,133,704.86	$271,681.52	$67,423.51
PROFIT (loss) FROM OPERATIONS BEFORE GENERAL AND ADMINISTRATIVE EXPENSES	$ 2,959,412.28	$2,698,639.19	$ 327,521.47	$ [illegible]	$3,092,258.36	$2,673,953.73	$ 476,068.61	$ [illegible]	$2,673,953.73	$ 476,068.61	$ [illegible]	$ [illegible]	$ 24,685.46	$ [illegible]	$ 8,284.46

2011

Note: Figures marked "R" are in red ink

SCHEDULE 2

THE TIMES-PICAYUNE PUBLISHING COMPANY

GENERAL AND ADMINISTRATIVE EXPENSES
FOR THE YEARS ENDED DECEMBER 31, 1948 AND 1947, AND COMPARISON

	YEAR ENDED DECEMBER 31, 1948	1947	INCREASE DECREASE
GENERAL:			
Officers' salaries	$ 109,866.66	$124,200.00	$14,333.34
Directors' fees	2,050.00	1,650.00	400.00
Other salaries and wages:			
Warehouse	19,697.06	14,084.27	5,612.79
Truck	5,486.22	5,120.47	365.75
Telephone operators	13,960.43	13,116.29	844.14
Promotion	9,111.44	8,547.37	564.07
Radio	21,562.15	13,399.13	8,163.02
Power and light	29,010.51	25,645.91	3,364.60
Fuel	2,491.49	2,524.60	33.11 R
Legal	26,582.58	21,871.67	4,710.91
Telephone and telegraph	18,939.59	16,383.88	2,555.71
Warehouse expense	8.40	4.10	4.30
Freight and express charges	11,950.98	9,420.64	2,530.34
Truck expense	4,369.87	4,840.45	470.58 R
Transportation and travel	5,018.20	5,923.23	905.03 R
Supplies	1,176.39	839.24	337.15
Contributions	15,475.00	33,985.00	18,510.00 R
Watchman service	8,710.80	8,733.00	22.20 R
Pensions to former employees	11,297.50	10,010.00	1,287.50
Accountants' fees	6,000.00	4,850.00	1,150.00
Dues	8,673.79	9,219.60	545.81 R
Pro rata of operating expense of American Newspaper Advertising Network	3,336.42	12,241.03	8,904.61 R
Miscellaneous	28,081.52	19,936.56	8,144.96
Total	$ 362,857.00	$366,546.44	$ 3,689.44 R
OFFICE:			
Salaries:			
Office	$ 121,241.54	$113,453.58	$ 7,787.96
Credit department	86,178.06	78,812.10	7,365.96
Auditing department	54,104.09	49,665.42	4,438.67
Stationery and supplies	10,975.75	8,088.85	2,886.90
Postage	7,539.92	7,073.37	466.55
Miscellaneous	2,277.71	2,021.89	255.82
Total	$ 282,317.07	$259,115.21	$23,201.86
INSURANCE	$ 85,362.72	$ 71,011.90	$14,350.82
TAXES:			
Real estate and personal property	$ 38,788.39	$ 37,914.73	$ 873.66
Louisiana corporation franchise	8,358.50	7,408.81	949.69
Mississippi corporation franchise	10.00	10.00	
Social security	53,421.94	52,868.58	553.36
City and State sales	27,990.72	11,642.13	16,348.59
Federal excise	18,649.12	17,987.11	662.01
Total	$ 147,218.67	$127,831.36	$19,387.31
DEPRECIATION:			
Buildings	$ 23,699.94	$ 18,142.78	$ 5,557.16
Equipment, furniture, and fixtures	91,995.25	64,023.22	27,972.03
Total	$ 115,695.19	$ 82,166.00	$33,529.19
PROVISION FOR DOUBTFUL ACCOUNTS (less recoveries - 1948, $8,508.63; 1947, $5,876.21)	$ 26,584.83	$ 20,336.17	$ 6,248.66
TOTAL	$1,020,035.48	$927,007.08	$93,028.40

Salaries paid to certain officers of the Company aggregating $83,083.38 in 1948 and $44,837.32 in 1947 are charged to other operating accounts.

[fol. 2013] GOVERNMENT EXHIBIT 8

The Times-Picayune Publishing Company

Report on Examination for the Year Ended December 31, 1949

[fol. 2014] Haskins & Sells

Certified Public Accountants

Hibernia Bank Building

New Orleans 12

March 30, 1950.

The Times-Picayune Publishing Company, 615 North Street, New Orleans 4, Louisiana.

DEAR SIRS:

We have made an examination of your accounts for the year ended December 31, 1949 and present our certificate and the following financial statements:

Balance Sheet, December 31, 1949 and 1948, and Comparison (Exhibit A).
Summary of Net Income and Undivided Profits for the Years Ended December 31, 1949 and 1948, and Comparison (Exhibit B).

Statement of Profit From Operations Before General and Administrative Expenses (Schedule 1).
General and Administrative Expenses (Schedule 2).

Departmental Expenses (Sub-Schedule 1).
Operating Expenses—Radio Station WTPS (Sub-Schedule 2).

Yours truly, Haskins & Sells.

[fol. 2015] Accountants' Certificate

The Times-Picayune Publishing Company:

We have examined the balance sheet of The Times-Picayune Publishing Company as of December 31, 1949 and the related summary of net income and undivided

profits for the year then ended. Our examination was made in accordance with generally accepted auditing standards, and accordingly included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

In our opinion, the accompanying balance sheet and summary of net income and undivided profits present fairly the financial position of the Company at December 31, 1949 and the results of its operations for the year then ended, in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year.

Haskins & Sells.

March 30, 1950.

THE TIMES-PICAYUNE PUBLISHING COMPANY

BALANCE SHEET, DECEMBER 31, 1949 AND 1948, AND COMPARISON

--ASSETS--	DECEMBER 31 1949	DECEMBER 31 1948	INCREASE (DECREASE)
CURRENT ASSETS:			
Cash	$ 805,272.84	$ 518,305.19	$ 286,967.65
United States government bonds - at cost, less amortization of bond premiums (quoted market value - 1949, $800,129.69; 1948, $731,989.87):			
Tax savings notes (not including tax notes deducted from liability for Federal taxes)	87,910.00	7,205.50	20,704.50
Other	50,195.00	715,200.00	[illegible]
Total United States government bonds	$ 138,105.00	$ 722,405.50	$ [illegible]
Accounts receivable:			
Trade (less reserve for losses, $15,000.00)	$1,035,412.56	$ 934,098.95	$ 101,313.61
Employees	2,078.14	2,234.93	[illegible]
Other	2,086.65	14,787.12	[illegible]
Total accounts receivable	$1,040,777.35	$ 952,521.00	$ [illegible]
Inventories - at cost:			
Newsprint paper	$ 481,133.24	$ 173,482.65	$ 307,650.59
Supplies	[illegible]	32,909.19	[illegible]
Total inventories	$ [illegible]	$ [illegible]	$ 313,606.19
Total current assets	$2,2[illegible]	$2,380,623.53	$ [illegible]
POSTWAR REHABILITATION AND EXPANSION FUND:			
Cash	$ [illegible]	$ 20,105.33	$ 75,381.31
United States government bonds - at cost, less amortization of premiums (quoted market value - 1949, $702,294.37; 1948, $601,486.25)	700,379.01	580,448.75	122,931.26
Total postwar rehabilitation and expansion fund	$ [illegible]	$ [illegible]	$ [illegible]
INVESTMENTS - At cost:			
Capital stock of subsidiary company (see Note)	$ [illegible],000.00	$ 56,000.00	
International Paper Company common (quoted market value - 1949, $491,062.50; 1948, $346,781.25):	70,338.25	70,338.25	
Cocoa River Newsprint Company common	400,000.00	400,000.00	
Other stocks and bonds	[illegible]	[illegible]	$ 1,300.00
Total investments	$ [illegible]	$ [illegible]	$ 1,300.00
PROPERTY - At cost:			
Land	$ 305,197.00	$ 305,197.00	$ 00.00
Buildings	901,240.18	901,240.18	
Machinery and equipment	2,272,732.78	2,195,545.65	77,187.13
Furniture and fixtures	219,686.54	200,269.97	19,416.57
Trucks	[illegible]	16,779.29	
Total property	$3,[illegible]	$3,[illegible]	$ 96,603.70
Less reserve for depreciation	1,310,970.63	1,332,447.03	[illegible]
Property - net	$2,[illegible]	$2,[illegible]	$ [illegible]
DEPOSITS AND PAYMENTS ON CONTRACTS FOR PURCHASES OF MACHINERY AND EQUIPMENT AND CONSTRUCTION OF ADDITIONS AND IMPROVEMENTS TO BUILDINGS IN PROCESS	$ 231,020.63	$ [illegible]	$ [illegible]
FRANCHISE AND GOODWILL	$ 250,000.00	$ 250,000.00	
OTHER ASSETS:			
Carriers' routes	$ 38,530.00	$ 38,530.00	
Funds on deposit with closed bank - Hibernia Bank & Trust Co. In Liquidation (less reserve for loss, $976.00)	Nil	Nil	
Unexpired insurance premiums	35,108.42	35,072.34	$ 36.08
Prepaid advertising commissions	16,596.93	16,765.71	[illegible]
Other	2,022.00	2,022.00	
Total other assets	$ [illegible]	$ [illegible]	$ [illegible]
TOTAL	$[illegible]	$[illegible]	$[illegible]

--LIABILITIES--	DECEMBER 31 1949	DECEMBER 31 1948	INCREASE (DECREASE)
CURRENT LIABILITIES:			
Accounts payable - trade and miscellaneous	$1,072,605.28	$ 679,554.10	$ 393,051.18
Social security and income taxes withheld from employees' salaries	63,953.97	58,986.71	4,967.26
Louisiana income taxes	56,000.00	50,000.00	6,000.00
Federal income taxes:			
Current year (less United States Treasury tax savings notes - 1949, $830,000.00; 1948, $740,000.00)	Nil	Nil	
Prior years	17,113.98	12,581.48	4,532.50
Accrued expenses:			
Salaries and wages	35,011.07	22,336.04	12,675.03
Advertising commissions	6,777.99	7,387.56	[illegible]
Social security taxes	13,521.88	14,294.55	[illegible]
Total current liabilities	$1,264,884.17	$ [illegible]	$ 419,743.73
DEFERRED INCOME - Unexpired subscriptions	$ 52,209.64	$ 53,675.11	$ [illegible]
CAPITAL STOCK - Authorized, 300,000 shares of $10.00 each; issued and outstanding, 280,000 shares	$2,800,000.00	$2,800,000.00	
SURPLUS AND UNDIVIDED PROFITS:			
Surplus	$1,700,000.00	$1,700,000.00	
Undivided profits, per Exhibit B	2,238,770.32	[illegible]	$ 653,509.60
Total surplus and undivided profits	$3,938,770.32	$3,285,260.72	$ 653,509.60
TOTAL	$[illegible]	$[illegible]	$[illegible]

Note: Figures marked "R" are in red ink.

NOTES: The net assets of the subsidiary company at December 31, 1949 amounted to $81,535.61, or $25,535.61 in excess of the cost at which this investment is carried on the Company's books.

The balance due on outstanding contracts for purchases of machinery and equipment and construction of additions and improvements to buildings amounted to approximately $1,025,000.00 at December 31, 1949.

2018

"R" are in red ink.

THE TIMES-PICAYUNE PUBLISHING COMPANY

SUMMARY OF NET INCOME AND UNDIVIDED PROFITS
FOR THE YEARS ENDED DECEMBER 31, 1949 AND 1948, AND COMPARISON

	....YEAR ENDED DECEMBER 31... 1949	1948	INCREASE DECREASE
OPERATING REVENUES - Schedule 1:			
Advertising	$ 8,774,522.76	$ 7,728,739.32	$1,045,783.44
Circulation	3,430,614.77	3,336,727.39	93,887.38
Radio	106,092.17	60,833.50	45,258.67
Other	175,102.73	196,763.12	21,660.39
Total	$12,486,332.43	$11,323,063.33	$1,163,269.10
OPERATING EXPENSES - Schedule 1:			
Newsprint paper	$ 3,896,401.52	$ 3,527,704.17	$ 368,697.35
Ink	81,765.72	69,930.95	11,834.77
Roto magazine production	406,544.64	369,333.64	37,211.00
Departmental expenses	4,721,133.05	4,269,100.41	452,032.64
Radio Station WTPS	114,856.40	127,581.88	12,725.48
Total	$ 9,220,701.33	$ 8,363,651.05	$ 857,050.28
PROFIT FROM OPERATIONS BEFORE GENERAL AND ADMINISTRATIVE EXPENSES	$ 3,265,631.10	$ 2,959,412.28	$ 306,218.82
GENERAL AND ADMINISTRATIVE EXPENSES - Schedule 2	1,112,033.24	1,020,035.48	91,997.76
PROFIT FROM OPERATIONS	$ 2,153,597.86	$ 1,939,376.80	$ 214,221.06
OTHER INCOME CREDITS:			
Profit on sale of securities		$ 1,138.56	$ 1,138.56
Profit on sale of capital assets	$ 10,082.32		10,082.32
Dividends on stock	35,880.00	37,030.00	1,150.00
Interest received:			
Bonds (less amortization of bond premiums - 1949, $102.10; 1948, $1,073.74)	33,510.82	33,119.42	391.40
Other	32.17	99.35	67.18
Miscellaneous	7,274.57	4,704.11	2,570.46
Total	$ 86,779.88	$ 76,091.44	$ 10,688.44
GROSS INCOME	$ 2,240,377.74	$ 2,015,468.24	$ 224,909.50
INCOME CHARGES:			
Provision for income taxes:			
Current year:			
Federal normal and surtax	$ 830,000.00	$ 740,000.00	$ 90,000.00
State of Louisiana	56,000.00	50,000.00	6,000.00
Prior years - Federal income and excess profits and State of Louisiana	702.71	4,208.28	3,505.57
Interest on additional income taxes	165.43	691.41	525.98
Loss on sales and abandonments of capital assets		145.16	145.16
Cost of plans for office building abandoned		7,500.00	7,500.00
Total	$ 886,868.14	$ 802,544.85	$ 84,323.29
NET INCOME	$ 1,353,509.60	$ 1,212,923.39	$ 140,586.21
UNDIVIDED PROFITS AT BEGINNING OF THE YEAR	1,585,260.72	1,572,337.33	12,923.39
GROSS UNDIVIDED PROFITS	$ 2,938,770.32	$ 2,785,260.72	$ 153,509.60
CHARGES TO UNDIVIDED PROFITS:			
Dividends	$ 700,000.00	$ 700,000.00	
Transferred to surplus account		500,000.00	$ 500,000.00
Total	$ 700,000.00	$ 1,200,000.00	$ 500,000.00
UNDIVIDED PROFITS AT END OF THE YEAR	$ 2,238,770.32	$ 1,585,260.72	$ 653,509.60

Cameraman's note: Items indicated as "R" (R—), are in red ink.

SCHEDULE 1

THE TIMES-PICAYUNE PUBLISHING COMPANY

STATEMENT OF PROFIT FROM OPERATIONS BEFORE GENERAL AND ADMINISTRATIVE EXPENSES
FOR THE YEARS ENDED DECEMBER 31, 1949 AND 1948, AND COMPARISON

	YEAR ENDED DECEMBER 31		INCREASE DECREASE	DISTRIBUTION BY DEPARTMENTS — YEAR ENDED DECEMBER 31, 1949		
	1949	1948		THE TIMES-PICAYUNE	NEW ORLEANS STATES	RADIO STATION WTPS
OPERATING REVENUES:						
Advertising:						
Retail	$ 5,171,253.11	$ 4,444,246.81	$ 727,006.30	$ 4,533,864.07	$ 637,389.04	
Classified	1,486,010.29	1,448,283.41	37,726.88	1,168,948.63	317,061.66	
General	1,733,053.15	1,457,217.33	275,835.82	1,334,146.06	398,907.09	
Comic section	189,288.76	163,060.49	26,228.27	189,288.76		
Roto magazine:						
Retail	177,255.25	180,004.25	2,749.00 R	177,255.2		
General	330,244.41	292,170.07	38,074.34	330,244.41		
Total	$ 9,087,104.97	$ 7,984,982.36	$1,102,122.61	$ 7,733,747.18	$1,353,357.79	
Less:						
Discounts and allowances	$ 290,434.21	$ 232,202.45	$ 58,231.76 R	$ 251,879.84	$ 38,554.37	
Agents' commissions	22,148.00	24,040.59	1,892.59	22,148.00		
Total	$ 312,582.21	$ 256,243.04	$ 56,339.17	$ 274,027.84	$ 38,554.37	
Net advertising revenues	$ 8,774,522.76	$ 7,728,739.32	$1,045,783.44	$ 7,459,719.34	$1,314,803.42	
Circulation:						
Carriers	$ 1,759,114.88	$ 1,693,453.07	$ 65,661.81	$ 1,140,157.40	$ 618,957.48	
Country news dealers	1,140,817.34	1,106,704.95	34,112.39	1,000,506.38	140,310.96	
City news dealers	413,499.50	415,570.85	2,071.35 R	255,485.09	158,014.41	
Country subscription	67,831.00	73,068.80	5,237.80 R	65,575.22	2,255.78	
Office subscription	49,352.05	47,929.92	1,422.13	42,891.41	6,460.64	
Total circulation revenues	$ 3,430,614.77	$ 3,336,727.39	$ 93,887.38	$ 2,504,615.50	$ 925,999.27	
Radio:						
AM revenues	$ 89,700.71	$ 44,532.33	$ 45,168.38			$ 89,700.71
FM revenues	5,892.53	9,581.09	3,688.56 R			5,892.53
Miscellaneous	13,121.69	9,034.18	4,087.51			13,121.69
Total	$ 108,714.93	$ 63,147.60	$ 45,567.33			$108,714.93
Less agents' commissions	2,622.76	2,314.10	308.66			2,622.76
Net radio revenue	$ 106,092.17	$ 60,833.50	$ 45,258.67			$106,092.17
Other:						
Cuts, mats, and metal sold	$ 166,593.99	$ 187,838.63	$ 21,244.64 R	$ 166,593.99		
Profit from sales of cook books and patterns	8,508.74	8,924.49	415.75 R	8,508.74		
Total other revenues	$ 175,102.73	$ 196,763.12	$ 21,660.39 R	$ 175,102.73		
Total	$12,406,332.43	$11,373,063.33	$1,163,269.10	$10,139,437.57	$2,240,802.69	$106,092.17
OPERATING EXPENSES:						
Newsprint paper (less sales)	$ 3,896,401.52	$ 3,527,704.17	$ 368,697.35	$ 3,203,504.44	$ 692,897.08	
Ink	$ 81,765.72	$ 69,930.95	$ 11,834.77	$ 70,503.05	$ 11,262.67	
Roto magazine production	$ 406,544.64	$ 369,333.04	$ 37,211.00	$ 406,544.64	$	
Departmental expenses - Sub-schedule 1:						
Composing room	$ 854,954.78	$ 727,774.84	$ 127,179.94	$ 577,368.27	$ 277,586.51	
Press room	296,948.95	255,628.52	41,320.43	243,406.14	53,542.81	
Stereotype room	188,649.00	164,496.20	24,152.80	135,619.67	53,029.33	
Photo engraving	155,751.85	141,610.86	14,140.99	126,679.71	29,072.14	
Mail room	216,162.22	175,655.34	40,506.88	175,131.78	41,030.44	
Maintenance	150,747.56	130,894.19	19,853.37	147,637.18	3,110.38	
Advertising	484,204.31	454,315.69	29,888.62	404,662.28	79,542.03	
Editorial	1,141,397.87	1,067,037.73	74,360.14	760,555.72	380,842.15	
Circulation	1,232,316.51	1,151,687.04	80,629.47	861,268.05	371,048.46	
Total departmental expenses	$ 4,721,133.05	$ 4,269,100.41	$ 452,032.64	$ 3,432,328.80	$1,288,804.25	
Radio Station WTPS - Sub-schedule 2:						
Direct expenses	$ 6,304.51	$ 2,812.57	$ 3,491.94			$ 6,304.51
Technical department	39,170.69	48,386.49	9,215.80			39,170.69
Program department	49,882.66	58,597.96	8,715.30			49,882.66
Sales department	19,498.54	17,704.86	1,793.68			19,498.54
Total radio station WTPS	$ 114,856.40	$ 127,501.88	$ 12,725.48			$114,856.40
Total	$ 9,220,701.33	$ 8,363,651.05	$ 857,050.28	$ 7,112,089.93	$1,992,964.00	$114,856.40
PROFIT (loss) FROM OPERATIONS BEFORE GENERAL AND ADMINISTRATIVE EXPENSES	$ 3,185,631.10	$ 3,009,412.28	$ 306,218.82	$ 3,026,556.64	$ 247,838.69	$ [illegible]

THE TIMES-PICAYUNE PUBLISHING COMPANY

GENERAL AND ADMINISTRATIVE EXPENSES
FOR THE YEARS ENDED DECEMBER 31, 1949 AND 1948, AND COMPARISON

	YEAR ENDED DECEMBER 31, 1949	1948	INCREASE DECREASE
GENERAL:			
Officers' salaries	$ 113,400.00	$ 109,866.66	$ 3,533.34
Directors' fees	6,050.00	2,050.00	4,000.00
Other salaries and wages:			
Warehouse	23,841.66	19,697.06	4,144.60
Truck	6,057.83	5,486.22	571.61
Telephone operators	16,161.14	13,960.43	2,200.71
Promotion	14,708.39	9,111.44	5,596.95
Radio	22,416.65	21,562.15	854.50
Power and light	30,416.74	29,010.51	1,406.23
Fuel	2,434.90	2,491.49	56.59
Legal	26,[illegible]1.07	26,582.58	281.51
Telephone and telegraph	21,074.91	18,939.59	2,135.32
Warehouse		8.40	8.40
Freight and express	13,364.12	11,950.98	1,413.14
Truck	7,359.28	4,369.87	2,989.41
Transportation and travel	5,0[illegible]2.50	5,018.20	84.30
Supplies	1,[illegible]66.50	1,176.39	390.11
Contributions	19,9[illegible].00	15,475.00	4,500.00
Watchmen service	8,829.19	8,710.80	118.39
Pensions to former employees	16,31[illegible].00	11,297.50	5,017.50
Accountants' fees	5,502.19	6,000.00	497.82
Dues	10,463.90	8,673.79	1,790.11
Pro rata of operating expense of American Newspaper Advertising Network (net refund in red)	2,665.05 R	3,336.42 R	6,001.47 R
Miscellaneous	29,77[illegible].38	28,081.52	1,694.86
Total	$ 228,302.26	$ 362,857.00	$35,525.26
OFFICE:			
Salaries:			
Office	$ 129,989.04	$ 121,241.54	$ 8,748.30
Credit department	91,503.55	86,178.06	5,325.49
Auditing department	57,524.48	54,104.09	3,420.39
Stationery and supplies	9,450.94	10,975.75	1,524.81
Postage	7,859.04	7,539.92	319.12
Miscellaneous	2,436.47	2,277.71	158.76
Total	$ 298,764.32	$ 282,317.07	$16,447.25
INSURANCE	$ 102,533.54	$ 85,362.72	$17,170.82
TAXES:			
Real estate and personal property	$ 50,[illegible]05.48	$ 38,788.39	$12,017.09
Louisiana corporation franchise	9,127.83	8,358.50	769.39
Mississippi corporation franchise	10.00	10.00	
Social security	55,159.82	53,421.94	1,737.88
City and State sales	12,406.46	27,990.72	15,584.26
Federal excise	29,370.19	18,649.12	1,720.98
Total	$ 147,059.78	$ 147,218.67	$ 741.98
DEPRECIATION:			
Buildings	$ 23,702.63	$ 23,699.94	$ 2.69
Equipment, furniture and fixtures	122,025.77	91,995.25	30,030.52
Total	$ 145,728.40	$ 115,695.19	$30,033.21
PROVISION FOR DOUBTFUL ACCOUNTS (less recoveries, 1949, $10,340.62; 1948, $8,508.63)	$ 18,664.97	$ 26,584.83	$ 7,919.86
TOTAL	$1,112,033.24	$1,020,035.48	$91,997.76
SUMMARY OF COMPANY'S DISTRIBUTION OF GENERAL AND ADMINISTRATIVE EXPENSES:			
The Times-Picayune	$ 872,359.52	$ 797,510.21	$74,849.31
New Orleans States	30,496.01	29,592.22	903.79
Radio Station WTPS	47,449.39	47,316.61	132.78
Not allocated:			
Depreciation	145,728.40	115,695.19	30,033.21
Provision for doubtful accounts	18,664.97	26,584.83	7,919.86
Other	[illegible]	1,336.42	6,001.47
TOTAL	$1,112,033.24	$1,020,035.48	$91,997.76

Salaries paid to certain officers of the Company aggregating $[illegible]2,682.99 in 1949 and $83,083.30 in 1948 are charged to other operating accounts.

Cameraman's note: Items indicated as "R" (R—), are in red ink.

EXHIBIT 1

THE TUTTS-PICAYUNE PUBLISHING COMPANY

DEPARTMENTAL EXPENSES
FOR THE YEARS ENDED DECEMBER 31, 1949 AND 1948, AND COMPARISON

	...YEAR ENDED DECEMBER 31... 1949	1948	INCREASE DECREASE
COMPOSING ROOM:			
Payroll	$ 832,283.50	$ 703,632.02	$128,571.48
Type machine supplies	14,877.14	16,578.46	1,701.32
Other supplies	4,131.39	3,851.06	280.33
Other expense	3,742.75	3,713.30	29.45
Total	$ 854,954.78	$ 727,774.84	$127,179.94
PRESS ROOM:			
Payroll	$ 252,755.79	$ 220,712.80	$ 32,042.99
Supplies	28,205.46	19,749.90	8,455.56
Rollers	12,796.61	9,455.00	3,341.61
Other expense	3,191.09	5,710.82	2,519.73
Total	$ 296,948.95	$ 255,628.52	$ 41,320.43
STEREOTYPE ROOM:			
Payroll	$ 162,862.37	$ 140,427.14	$ 22,435.23
Supplies	25,317.13	23,301.95	1,615.18
Other expense	260.00	166.61	192.39
Total	$ 188,649.00	$ 164,496.20	$ 24,152.80
PHOTO ENGRAVING:			
Payroll	$ 119,959.51	$ 109,682.76	$ 10,176.75
Supplies	35,631.10	31,595.60	4,035.50
Other expense	261.24	332.50	71.26
Total	$ 155,751.85	$ 141,610.86	$ 14,140.99
MAIL ROOM:			
Payroll	$ 195,742.20	$ 156,930.43	$ 38,811.77
Supplies	18,276.12	18,157.20	118.92
Other expense	2,143.90	567.71	1,576.19
Total	$ 216,162.22	$ 175,655.34	$ 40,506.88
MAINTENANCE:			
Payroll:			
Superintendent and stock room	$ 26,778.93	$ 24,814.63	$ 1,964.30
Elevator tenders	7,741.79	7,920.95	179.16
Porters	29,546.12	26,160.18	3,383.94
Electricians, carpenters, and machinists	55,505.45	47,774.71	7,730.74
Building repairs	2,997.01	3,484.00	486.99
Electrical repairs	6,423.01	5,644.93	778.08
Supplies	19,893.60	13,659.44	6,234.24
Other expense	1,862.67	1,434.55	428.12
Total	$ 150,747.58	$ 130,894.19	$ 19,853.37
ADVERTISING:			
Payroll:			
Display	$ 166,441.56	$ 149,867.84	$ 16,573.72
Classified	49,604.51	48,564.68	1,039.83
Classified - telephone solicitors	25,576.27	25,760.59	184.32
General	45,458.42	43,794.66	1,663.76
Roto magazine	4,576.55	4,834.37	257.82
Expense - local	22,309.40	22,561.08	248.32
Expense - classified	8,080.21	7,017.62	1,062.59
Expense - general	42,602.39	44,029.69	1,427.30
Expense - roto magazine	5,246.71	4,868.08	378.63
Supplies	5,853.94	6,282.66	428.72
Commission - general	95,441.72	85,276.68	10,165.04
Transportation and travel	1,764.17	1,620.38	143.79
Other expense	10,748.46	9,837.36	911.10
Total	$ 484,204.31	$ 454,315.69	$ 29,888.62
EDITORIAL:			
Payroll:			
Proper	$ 73,418.70	$ 64,144.96	$ 9,273.74
City	295,342.88	281,983.28	13,359.61
News	228,198.86	211,131.83	17,067.03
Sunday	17,233.73	14,502.10	2,731.63
Correspondents	29,333.16	28,317.60	1,015.56
Roto magazine	41,452.60	38,650.73	2,801.87
Correspondents - Sunday	40,478.84	37,750.65	2,728.19
Correspondents - news	152,090.94	141,242.64	10,848.30
Associated Press	119,607.70	110,892.44	8,715.26
Telephone and telegraph and wire service	48,480.06	44,005.33	4,474.73
Transportation and travel	24,865.03	23,221.41	1,643.62
Supplies	12,718.50	10,286.04	2,432.46
Roto magazine	19,132.22	18,805.27	326.95
Other expense	38,448.64	41,503.45	3,054.81
Total	$1,141,397.87	$1,067,037.73	$ 74,360.14
CIRCULATION:			
Payroll:			
Office	$ 109,444.90	$ 101,518.93	$ 7,925.97
Canvassers - city	304,119.51	365,205.99	61,086.48
Canvassers - country	41,964.63	35,666.51	6,298.12
Mail and express	56,708.43	55,589.92	1,118.51
Hauling	395,391.06	365,062.31	30,328.75
Stationery and supplies	14,243.61	10,244.43	3,999.18
Transportation and travel	29,581.42	24,855.92	4,725.50
Postage	9,794.95	6,857.56	2,847.39
Other expense	271,298.00	196,685.47	74,612.53
Total	$1,232,746.51	$1,151,687.04	$ 80,629.47
TOTAL	$4,771,133.05	$4,269,109.41	$502,023.64

Cameraman's note: Items indicated as "R" (R—), are in red ink.

SUB-SCHEDULE 2

THE TIMES-PICAYUNE PUBLISHING COMPANY

OPERATING EXPENSES - RADIO STATION WTPS
FOR THE YEARS ENDED DECEMBER 31, 1949 AND 1948, AND COMPARISON

	YEAR ENDED DECEMBER 31. 1949	1948	INCREASE DECREASE
DIRECT EXPENSES:			
Records and transcriptions	$ 6,020.66	$ 2,812.57	$ 3,208.09
Special wire facilities	283.85		283.85
Total direct expenses	$ 6,304.51	$ 2,812.57	$ 3,491.94
TECHNICAL DEPARTMENT:			
Salaries	$ 26,986.57	$ 28,121.57	$ 1,135.00
Power and light	2,756.77	2,107.16	649.61
Fuel	68.82	78.95	10.13
Maintenance and repairs:			
Buildings and grounds	137.35	1,192.23	1,054.88
Technical equipment	616.81	743.14	126.33
Tubes	1,093.57	2,088.05	994.48
Transmitter line	670.18	1,120.58	442.40
Outside engineering expenses	3,530.83	6,689.36	3,158.53
Supplies	1,219.93	4,362.33	3,142.40
Other expenses	2,081.86	1,883.12	198.74
Total technical department	$ 39,170.69	$ 48,386.49	$ 9,215.80
PROGRAM DEPARTMENT:			
Salaries	$ 35,928.89	$ 43,689.00	$ 7,760.11
Maintenance and repairs - studio and non-technical equipment	56.68	115.70	59.02
Lines and special wire facilities - sustaining	717.11	1,211.07	493.96
Music, records and transcriptions - sustaining	4,278.23	4,836.01	557.78
Talent - sustaining	152.00	147.00	5.00
News service - sustaining	3,975.00	3,753.92	221.08
Royalties and license fees relating to program material	3,100.65	2,864.14	236.51
Supplies	1,133.64	1,321.05	187.41
Other expense	540.46	660.07	119.61
Total program department	$ 49,882.66	$ 58,597.96	$ 8,715.30
SALES DEPARTMENT:			
Salaries	$ 16,698.44	$ 10,201.01	$ 6,497.43
Sales commission - station representatives	177.57		177.57
Advertising	398.64	4,962.64	4,564.00
Promotion	450.45	1,440.77	990.32
Supplies	54.77	130.74	75.97
Other expense	1,718.67	1,049.70	668.97
Total sales department	$ 19,498.54	$ 17,784.86	$ 1,713.68
TOTAL	$114,856.40	$127,581.88	$12,725.48

Cameraman's notes: Items indicated as "R" (R—), are in red ink.

Government Exhibit 14

1297

April 1, 1947

Mr. E. A. Lambert,
Gebhardt Chili Powder Co.,
112 S. Frio St.,
San Antonio, Texas.

Dear Mr. Lambert:

We have seen your advertising in the New Orleans Item and called on Mr. Marshall Gerde of Gerde-Newman, your distributors, in the hope of obtaining some of this business for the Times-Picayune and New Orleans States.

Mr. Gerde is very anxious to have this copy appear in our papers and has asked that we write you in this connection.

The Times-Picayune, morning, with a circulation of 156,572 and the N.O. States, evening, with a circulation of 88,122 offer a very fine coverage of the New Orleans market, with a minimum of duplication which has been proven on two occasions by a 100 % audit of the carrier circulation of The Times-Picayune and N. O. States by Ernst & Ernst. The results showed that the States is duplicated by the Times-Picayune by only 27%.

We hope it is your intention to use our papers for the Gebhardt schedule.

Yours very truly,

2022

M/LR

Roland Ladreyt
Manager, General Advertising

Note at bottom of page is supposedly the following:

"Gerde say he has not had a word from him, but thinks it is about time for Mr. Lambert to answer."

This was the wording as taken from the text of the record.

1268

Government Exhibit 15

The Times-Picayune Publishing Company

The Times-Picayune — NEW ORLEANS STATES

LAFAYETTE SQUARE — NEW ORLEANS

August 8, 1949

Mr. I. L. Grant,
National Biscuit Co.,
Box 1269,
Houston, Texas.

Dear Mr. Grant:

When you were in New Orleans you suggested that I write you a letter concerning the advantages of using both The Times-Picayune and New Orleans States for your advertising.

First, I would like to give you a record of the circulation of New Orleans newspapers from ABC Publishers' Statement for three months ending March 31, 1949, as follows:

Newspaper	Carrier	Street Sales	Total	City	Suburban	City & Suburb	Total
T-P Daily	96,127	14,860	111,910	24,066	135,976	174,408
T-P Sunday	127,571	25,049	159,452	43,441	202,893	283,710
States	55,451	21,306	78,335	11,368	89,703	96,228
Item	60,635	17,675	79,406	9,980	89,386	97,226

Next, I want to give you information covering the 5,000 line rate of New Orleans newspapers, which is the minimum rate the National Biscuit Company will earn during your contract year.

Times-Picayune	(morning)	39¢
States	(evening)	23¢
Combination	(M & E)	54½¢
Item		22¢

The above gives a complete picture insofar as circulation and rates are concerned.

The extenxive coverage of The Times-Picayune in the City of New Orleans (112,000) and the outstanding leadership of The Times-Picayune in retail grocery advertising qualifies it as the backbone of any advertising effort in this market. The use of the Item or the States, or both, in addition to The Times-Picayune might be considered as supplemental.

Mr. I. L. Grant,
National Biscuit Co.,
Box 1269,
Houston, Texas.

From observation of the advertising rates listed above, there is no question but that The Times-Picayune and States offer the most economical buy. But not only is our combination attractive from a cost standpoint, but, we believe that it offers the most complete coverage of newspaper reading families in metropolitan New Orleans for the following reasons:

The Times-Picayune and the States are produced by two entirely separate organizations. In the News Department each has its own complete staff, including editor, managing editor, city editor, reporters and even seperate staff of photographers. There is actually competition in the respective news departments for breaking first with outstanding events.

Each paper has its own Circulation Department, including different circulation managers, district managers, carriers, news boys, etc. and the Circulation Department, too, is on a competing basis.

There are two entirely separate retail advertising staffs.

As you no doubt noticed when you were in New Orleans, the make-up of the States and The Times-Picayune is as different as the New York Times and the New York Journal-American.

We can give you very definite information concerning the coverage of The Times-Picayune and States in this market. We have the names and addresses of the home delivered subscribers for both papers on our books, and we know that more than 35,000 families in New Orleans subscribe to the N. O. States which do not have The Times-Picayune weekday delivered to their homes.

This means positive, sure-fire, additonal coverage of at least 35,000 families which is substantial in itself. We cannot tell you how many of the more than 21,000 street sales duplicate The Times-Picayune or just how many duplicate the States home delivered, but lets say that only 10,000 (less than half) of the States street sales represent additonal coverage to The Times-Picayune. This would give the States 45,000 coverage in addition to The Times-Picayune city circulation of 112,000, or a combination coverage of 157,000 of the estimated total of 181,000 families in metropolitan New Orleans.

Mr. I. L. Grant,
National Biscuit Co.,
Box 1269,
Houston, Texas.

You can get a good idea of what complete coverage The Times-Picayune and States combination really gives when you compare the above figure with the total city circulation of The Times-Picayune-New Orleans States on Sunday, 159,542, which is the only Sunday newspaper in New Orleans and which must represent 100% readership of New Orleans newspapers.

With best wishes.

Yours very truly,

Roland Ladreyt
Manager, General Advertising

RL/GF
CC-Mr. Henry Rosche, National Biscuit Company, 632 Thalia Street, New Orleans, La.

September 12, 1949

Mr. M. J. Brennan,
Kinsey Distilling Corp.,
c/o I. L. Lyons & Co. Ltd.,
800 Tchoupitoulas Street,
New Orleans, Louisiana.

Dear Buddy:

Recently I talked to you about Kinsey being advertised in both The Times-Picayune and States and I promised to write you a letter to cover so that you could send it along with your recommendations to your Advertising Department.

I know you are aware of the great economy in taking advantage of our morning and evening combination rate, but I would like to tell you something about the value of the States as an advertising medium.

This value of the States has been recognised generally by advertising agencies throughout the country, as for the past six years the States has carried more distillery advertising than the Item, and in 1948 carried considerably more total national, or general, advertising. In fact, about 75% of our total general advertising is scheduled for our combination.

During newsprint shortage, when we had to ration advertising, we limited local liquor stores to 200 lines in both The Times-Picayune and States. This gave the Item quite an advantage upon which they capitalised. Since the Fair Trade Law there has not been an over abundance of liquor store advertising, but during January through August of this year the States has had at least an equal break with the Item.

But, the most important thing I want to call to your attention is the extensive coverage which the States gives you in addition to that of The Times-Picayune. You probably know the States has its own complete news staff, including editor, managing editor, city editor, reporters, photographers, feature and editorial writers which operates entirely independent of The Times-Picayune and produces a newspaper which is as

Mr M. J. Brennan,
Kinsey Distilling Corp.,
c/o I. L. Lyons & Co. Ltd.,
800 Tchoupitoulas Street,
New Orleans, Louisiana.

different than The Times-Picayune in appearance and make-up as the Chicago Herald American is from the Chicago Tribune.

The States has its own complete circulation department from circulation manager on down to carriers.

These two facts might explain why the duplication between The Times-Picayune and the States is so small. And we know exactly what this duplication is because the names and addresses of carrier subscribers are a part of our records, and we know for instance, that more than 35,000 States subscribers do not subscribe to The Times-Picayune. In addition, the States has approximately 20,000 street sales in the City of New Orleans, and we believe it would be conservative to say that at least half, or 10,000, of these street sales are unduplicated by The Times-Picayune, either through carrier or street sales.

This would mean that the States adds 45,000 families to the 107,000 city circulation of The Times-Picayune, or a total unduplicated city circulation of 152,000. The Sunday Times-Picayune-States naturally represents 100% readership of New Orleans newspapers and has a total city circulation of 152,330. And, we do not believe we would be far wrong in saying that the daily Times-Picayune and States with 152,000 unduplicated circulation also represents close to 100% coverage of New Orleans newspaper reading families.

With personal best wishes,

Yours very truly,

Roland Ladreyt
Manager, General Advertising

RL/GF

2027

Note at bottom of page is apparently the following:

Government Exhibit 17

November 26, 1949

Mr. Frank Quinn,
Standard Sales Co.,
511 N. Villere St.,
New Orleans, La.

Dear Mr. Quinn:

We are very pleased to have the current schedule of Blatz advertising in The Times-Picayune and, as requested by you of Mr. Fleming, we are arranging to mail a jumbo card to all licensees in New Orleans. Al Fleming tells me that you expect to visit the brewery soon and as I am confident that you are as anxious as we are to obtain Blatz advertising in the States, I am outlining herewith the advantage of using both The Times-Picayune and States for your advertising.

First, I would like to give you a record of the circulation of New Orleans newspapers from ABC Publishers' Statement for three months ending March 31, 1949, as follows:

Newspaper	Carrier	Street Sales	Total City	Suburban	City & Suburb	Total
T-P Daily	96,127	14,860	111,910	24,066	135,976	174,408
T-P Sunday	127,571	25,049	159,452	43,441	202,893	281,710
States	55,451	21,306	78,335	11,368	89,703	96,228
Item	60,635	17,675	79,406	9,980	89,386	97,226

Next, I want to give you information covering advertising rate of New Orleans newspapers, which is the rate the Blatz Brewing Company will earn during your contract year.

Times Picayune	(morning)	38¢
States	(evening)	22¢
Combination	(M & E)	52¢
Item		22¢

The above gives a complete picture insofar as circulation and rates are concerned.

The extensive coverage of The Times-Picayune in the City of New Orleans (112,000) and the outstanding leadership of The Times-Picayune in alcoholic beverages advertising qualifies it as the backbone of any advertising effort in this market. The use of the Item or the States, or both, in addition to The Times-Picayune might be considered as supplemental. (Incidentally, the States carried more beer and liquor advertising than the Item for the first ten months of this year).

2028

1304

Mr. Frank Quinn,
Standard Sol Co.,
511 N. Villere t.,
New Orleans, La.

November 26, 1949

From observation of the advertising rates listed above, there is no question but that The Times-Picayune and States offer the most economical buy. But not only is our combination attractive from a cost standpoint, but, we believe that it offers the most complete coverage of newspaper reading families in metropolitan New Orleans for the following reasons:

The Times-Picayune and the States are produced by two entirely separate organizations. In the News Department each has its own complete staff, including editor, managing editor, city editor, reporters and even separate staff of photographers. There is actually competition in the respective news departments for breaking first with outstanding events.

Each paper has its own Circulation Department, including different circulation managers, district managers, carriers, news boys, etc. and the Circulation Department, too, is on a competing basis.

There are two entirely separate retail advertising staffs.

As you no doubt know, the make-up of the States and The Times-Picayune is as different as the New York Times and the New York Journal-American.

We can give you very definite information concerning the coverage of The Times-Picayune and States in this market. We have the names and addresses of the home delivered subscribers for both papers on our books, and we know that more than 35,000 families in New Orleans subscribe to the New Orleans States which do not have The Times-Picayune weekday delivered to their homes.

This means positive, sure-fire, additional coverage of at least 35,000 families which is substantial in itself. We cannot tell you how many of the more than 21,000 street sales duplicate The Times-Picayune or just how many duplicate the States home delivered, but lets say that only 10,000 (less than half) of the States street-sales represent additional coverage to The Times-Picayune. This would give the States 45,000 coverage in addition to The Times-Picayune city circulation of 112,000, or a combination coverage of 157,000 of the estimated total of 181,000 families in metropolitan New Orleans.

You can get a good idea of what complete coverage The Times-Picayune and States combination really gives when you compare the above figure with the total city circulation of The Times-Picayune-States on Sunday, 159,452, which is the only Sunday newspaper in New Orleans and which must represent 100% Readership of New Orleans newspapers.

With best wishes.

Yours very truly,

2029

Roland Ladreyt
Manager General Advertising

RL/O

1385

Government Exhibit 18

5—MISCELLANEOUS

a. Established 1837.
b. Associated Press Service Morning and Sunday.
Exclusive Associated Press Service Morning.
c. Subscription price by carrier in New Orleans.
Daily and Sunday, $10.40 per year. Per copy morning or Sunday, 5c. Outside of New Orleans, morning 5c, Sunday 10c.
d. Amusement and Automobile pages Sunday.
e. The Times-Picayune accepts no trade contracts, no questionable financial or medical advertising.
f. The publisher reserves the right to revise or reject at his option, any advertisement which is deemed objectionable, either in its subject matter or phraseology or is opposed to the policy of the paper.
g. No advertisement will be cancelled after having appeared in any edition of the issue for which it was ordered.
h. Contracts for one year must read, "One year from date of contract." If actual service is not begun within contract within 30 days from its date it will be cancelled and a new contract required at existing rates. The Times-Picayune is not responsible for imperfect printing from cuts, halftones, etc., or imperfect impression of key numbers or letters or for errors in mails or electros.
i. Tolls on all advertisements sent by telegraph payable by advertiser.

The Times-Picayune Publishing Company.
John P. Tims, Jr., Business Manager.
Roland Ladreyt, Mgr. General Advertising.

GENERAL REPRESENTATIVES:

Cone, Rothenberg & Nose, Inc., New York, 10 East 40th St.; Chicago, 360 N. Michigan Blvd.; Detroit, General Motors Bldg.; Atlanta, 711 Glenn Bldg.; St. Louis, Victoria Bldg.; San Francisco, 444 California St.

All rates quoted by the above representatives must conform in every particular with the rates on this card.

The Times-Picayune is the dominant newspaper of New Orleans and its trading territory. Its total daily circulation is larger than the total daily circulation of the two afternoon newspapers combined.

(Prepared in conformity with "Standard Rate Card" of American Association of Advertising Agencies.)

NEW ORLEANS
Louisiana

The New Orleans Times-Picayune

Published Morning and Sunday

Issued February 1, 1933
In Effect February 15, 1933

1—GENERAL ADVERTISING

	Per Agate Line Daily	Sunday	*Combination Sunday & Daily
a. Flat rate	30c	35c	35c

b. No time discount.
c. No space discount.
*Advertisements run at combination rate may first appear in either Sunday or daily issue but both insertions must appear within one week, and be of same size and same copy.

COLOR	Per agate line Daily	Sunday	*Combination Sunday & Daily
One color and black full page only	25c	30c	45c

Per Agate Line

4. SPECIAL POSITIONS

	Daily	Sunday
Full Position, publisher's option, minimum 42 lines in depth	25c.	30c
Next to or following reading matter, at publishers' option	23c	28c

No preferred position sold for medical advertisements.

Minimum for one, two or three-column position advertisements, 42 lines in depth.

5—MECHANICAL REQUIREMENTS

a. Width of column 12 ems pica.
b. Depth of column 300 agate lines.
c. Eight columns to a page.
d. Double truck, 17 columns, 24 1-4 inches wide, 21 7-16 inches in depth.
e. Full page, type space 16 1-2 inches by 21 7-16 inches.
f. Black and white advertising intended for all editions of Sunday issue must be received by 6 p. m. Thursday.
All copy measuring over 250 lines in depth will be set and charged for lines.
g. Halftone screen required, 65 lines
h. Can use mats and unmounted 11-point electrotypes.

A minimum charge will be made for artwork and cuts supplied to advertisers.

The right is reserved to reject or lighten borders, type or cuts.

Composition: A charge of 25c per inch will be made for advertisements set up and not inserted. Advertisers are allowed one setting and one revision. All revisions after the first will be charged for at cost of labor.

i. Sunday, 64 to 116 pages. Daily, 20 to 48 pages.
j. Minimum depth R. O. P. 1 col. 1", 2 col. 2", 3 col. 3½", 4 col. 5", 5 col. 7", 6 col. 9", 7 col. 11", 8 col. 12½".

NEW ORLEANS
Louisiana

The New Orleans Times-Picayune

Published Morning and Sunday

Issued February 1, 1933
In Effect February 15, 1933

1—GENERAL ADVERTISING

	Per Agate Line Daily	Sunday	*Combination Sunday & Daily
a. Flat rate	30c	35c	35c

b. No time discount.
c. No space discount.
*Advertisements run at combination rate may first appear in either Sunday or daily issue but both insertions must appear within one week, and be of same size and same copy.

COLOR	Per agate line Daily	Sunday	*Combination Sunday & Daily
One color and black full page only	25c	30c	45c

Per Agate Line

4. SPECIAL POSITIONS

	Daily	Sunday
Full Position, publisher's option, minimum 42 lines in depth	25c	30c
Next to or following reading matter, at publishers' option	23c	28c

No preferred position sold for medical advertisements.

Minimum for one, two or three-column position advertisements, 42 lines in depth.

5—MECHANICAL REQUIREMENTS

a. Width of column 12 ems pica.
b. Depth of column 300 agate lines.
c. Eight columns to a page.
d. Double truck, 17 columns, 24 1-4 inches wide, 21 7-16 inches in depth.
e. Full page, type space 16 1-2 inches by 21 7-16 inches.
f. Black and white advertising intended for all editions of Sunday issue must be received by 6 p. m. Thursday.
All copy measuring over 250 lines in depth will be set and charged for lines.
g. Halftone screen required, 65 lines
h. Can use mats and unmounted 11-point electrotypes.

A minimum charge will be made for artwork and cuts supplied to advertisers.

The right is reserved to reject or lighten borders, type or cuts.

Composition: A charge of 25c per inch will be made for advertisements set up and not inserted. Advertisers are allowed one setting and one revision. All revisions after the first will be charged for at cost of labor.

i. Sunday, 64 to 116 pages. Daily, 20 to 48 pages.
j. Minimum depth R. O. P. 1 col. 1", 2 col. 2", 3 col. 3½", 4 col. 5", 5 col. 7", 6 col. 9", 7 col. 11", 8 col. 12½".

2030

1306

3—READING NOTICES

a. Readers, r. o. p., but not first, last, editorial or city pages—

	Daily	Sunday
Flat rate, per count line	$1.00	$1.25

b. Minimum 2 lines each insertion.
The full word "Advertisement" must follow all reading notices and must be included in count of lines and charge. Five ordinary words to the line.

4—SUNDAY COLOR MAGAZINE SECTION

Four colors (black and three primary colors, full page only)—

One page	$750.00 a page
Three pages	725.00 a page
Six pages	700.00 a page

Black and white only, inside pages, page not specified (Less than 7-col. width) 30c

Black and white 7 columns wide by 100 lines or more deep 25c

Minimum black and white R. O. P. advertisements one column, 21 lines deep. Can use plates or mats of standard 2-inch width column since.

MAGAZINE SECTION MECHANICAL REQUIREMENTS

Pages are 7 columns, 14 1-4" wide by 272 lines deep—1904 lines to the page. Same mechanical requirements as American Weekly and using same plates. Mats and shells are usable but electros are preferred. Color cuts or mats must bear register mark. All copy and plates must be complete ready for release two weeks previous to insertion date.

5—COMIC SECTION, Sunday, 12 Pages

a. RATES (Color Only—One to Three Colors and Black)

One page	$750.00 a page
Three pages	725.00 a page
Six pages	700.00 a page
One half page	400.00 each
Three half pages	350.00 each
Six half pages	325.00 each

Units of 21 lines and 28 lines across 7 columns at bottom of inside pages available black and white 30c per agate line. Black and one color 40c per agate line.

b. All ads must be 140 lines deep across 7 columns or 272 lines deep across 7 columns. 21 or 28 lines deep across 7 columns. No other sizes accepted.

c. All copy for comic section must be complete, ready for release two weeks in advance of publication.

Note

For lower portion of this page see next frame.

page only)—

One page	$750.00 a page
Three pages	725.00 a page
Six pages	700.00 a page

Black and white only, inside pages, page not specified (Less than 7-col. width) 30c

Black and white 7 columns wide by 100 lines or more deep 25c

Minimum black and white R. O. P. advertisements one column, 28 lines deep. Can use plates or mats of standard 3-inch width column sizes.

Pages are 7 columns, 14 1-4" wide by 272 lines deep—1904 lines to the page. Same mechanical requirements as American Weekly and using same plates. Mats and shells are usable but electros are preferred. Color cuts or mats must bear register mark. All copy and plates must be complete ready for release two weeks previous to insertion date.

5—COMIC SECTION, Sunday, 12 Pages

a. RATES (Color Only—One to Three Colors and Black)

One page	$750.00 a page
Three pages	725.00 a page
Six pages	700.00 a page
One half page	400.00 each
Three half pages	380.00 each
Six half pages	365.00 each

Units of 21 lines and 28 lines across 7 columns at bottom of inside pages available black and white 30c per agate line. Black and one color 40c per agate line.

b. All ads must be 140 lines deep across 7 columns or 272 lines deep across 7 columns. 21 or 28 lines deep across 7 columns. No other sizes accepted.

c. All copy for comic section must be complete, ready for release two weeks in advance of publication.

6—CLASSIFICATIONS

	Per Agate Line Daily	Sunday
a. AMUSEMENTS		
Flat Net	30c	30c
POLITICAL & PUBLIC OPINION	Daily	Sunday
Flat Net	30c	30c
b. CLASSIFIED ADVERTISING	Daily	Sunday
Minimum space 2 lines	20c	20c

Count 5 average words to line.

NOTICES—Minimum space 10 lines.

c. All Special Notices, Proposals, Bids, 25c per line. Subsequent consecutive insertions, 20c per line. Marriage, Birth and Death Notices $1.50 for first insertion. Subsequent consecutive insertions $1.00 each.

d. Contracts will be accepted for a period of one year only, but may be cancelled if copy is not inserted within thirty days from date of contract.

7—COMMISSION AND CASH DISCOUNT

a. Agency commission 15 per cent.

b. Cash discount 2 per cent on the net to advertising agencies only.

c. Payment and cash discount date, 20th of month following service. Bills payable monthly.

Failure to receive checking copies will not entitle agency to cash discount after expiration of discount date.

8—CIRCULATION

a. Member of Audit Bureau of Circulations.

b. Metropolitan newspaper, daily morning and Sunday morning.

c. The largest circulation in the city of New Orleans, the state of Louisiana and the trading territory of New Orleans.

d. U. S. government, September 30, 1932.

Average (paid) Morning	96,015
Average (paid) Sunday	125,184

1207

Government Exhibit 19

Louisiana—Continued

NEW ORLEANS (62)
(Orleans Parish)
(Commercial Unit)

City Corporate Limits (1930 Govt Census) ... 458,769
City Zone (1930 Govt Census) ... 473,221
Trading Zone (1930 Govt Census) ... 843,333

ABC

ITEM
TRIBUNE
SUNDAY ITEM-TRIBUNE

Published—Item—Weekday Evenings
Tribune—Weekday Mornings
Item-Tribune—Sunday only

Established Item 1877, per copy .03; Tribune 1934, per copy .05; Sunday 1877, per copy .05

Rates effective December 1, 1933.
Card Issued November 27, 1933.

Agency commission 15%; cash discount 2%—15th of following month. Failure to receive checking copies will not entitle agency to cash discount after expiration of discount date. Cash discount to advertising agencies only.

General Advertising — Per line

Evening	.17
Morning	.15
Morning and Evening	.22
Sunday	.14
Sunday Morning and Week Day Evening	.2

Advertisements run at the combination rates may first appear in any paper but succeeding insertions must follow within three days.
Same size ads and same copy. All combinations optional.

COLOR
Black and one color (Full pages only), extra 20%

Sunday Magazine Section
Sunday Comic Section
See listing in Newspaper Color, Magazine and Comic Section.

Classifications

	Morn.	Eve.	Sun.	M & E
Amusements, per line, not	.20	.25	.30	.35
Political, per line, net	.15	.25	.25	.30
Public opinion, per line, net	.15	.25	.25	.30

Position Charges—Extra
Next to or following reading ... 15%
Full position ... 25%
Minimum for position 42 lines
Special position at publisher's option. No preferred position sold for medical advertisements.

Minimum Depth R.O.P.
One column 10 lines; 2 columns 40 lines; 3 columns 73 lines; 4 columns 84 lines; 5 or more columns 112 lines. All copy measuring over 250 lines in depth will be set and charged 280 lines.

Classified Rates
Week days: morning and evening combination or Sunday .20 line per insertion. Five average words to the line. All special notices, proposals, bids, one time .25 line; subsequent consecutive times .20 line per insertion. Minimum space 10 lines.

Reading Notices
Morning .50 count line; evening .75 count line; Sunday .75 count line. Minimum 4 lines each insertion. The word "advertisement" must follow all reading notices and must be included in count lines and charge. Five ordinary words to the line. Readers not accepted for first or editorial page.

Position Charges—Extra
Top of column, extra per inch ... 10

Classified Rates
1 time rate .10 Line; daily for one month .09 line per insertion; daily for 3 months .08 line per insertion; daily for 6 months .07 line per insertion; daily for 12 months .06 line per insertion. Set in black face or caps .05 line extra. Count six words to the line. Minimum charge .25.

Reading Notices
Readers on front page .20 line per insertion. Six words to a line.

Mechanical Requirements

Width type page	10-1/8"	Column depth	210 lines
Depth type page	15"	Full page	1050 lines
Single col. width	2"	Double truck	20"
Each add'l col.	2"	Mats	
Columns to page	5		

Representatives
None.

ABC

TIMES-PICAYUNE
STATES
(Member Bureau of Advertising, A.N.P.A.)

Published Morning, Evening and Sunday

Established Times Picayune 1837, States 1880. Per copy morning .05; evening .03; Sunday .10

Rates effective January 1, 1935.
Card Issued December 15, 1934.
Card received December 10, 1934.

Agency commission 15%; cash discount 2%—20th of following month. Cash discount to advertising agencies only.

Failure to receive checking copies will not entitle agency to cash discount after expiration of discount date.

General Advertising — Per Line

States (evening)	.15
Times-Picayune (morning)	.22
Times-Picayune States (Sunday)	.30
Morning and Evening	.30
Evening and Sunday	.38
Morning and Sunday	.42

COLOR (Black and One Color)
(Full pages only)

States (evening)	.18
Times Picayune (morning)	.27
Times-Picayune States (Sunday)	.37
Morning and Evening	.38
Evening and Sunday	.47
Morning and Sunday	.52

Advertisements run at the combination rates may first appear in any paper but succeeding insertions must follow within three days. Same size advertisement and same copy. All combinations quoted are optional.

Sunday Magazine Section
Sunday Comic Section
See listing in Newspaper Color, Magazine and Comic Section.

Classifications

Morn. Eve. M. & E. Sun.

Personnel
Business Manager—John F. Tims, Jr.
Manager General Advertising—Roland Ladreyt

Representatives
Scott, Rothenburg & Jann, Inc.

RUSTON (10)
(Lincoln Parish)

City Corporate Limits (1930 Govt. Census) ... 4,400
City Zone (Publisher's estimate) ... 5,000
Trading Zone (Publisher's estimate) ... 100,000

LEADER

Published Evening except Sunday
Established 1905. Per copy .05
Rates received April 11, 1931.
Agency commission 15%; cash discount 2%—10th of following month.

General Advertising
Flat, per line ... .025

COMBINATION RATE
Daily and weekly (Thursday), per line ... .04

Minimum Depth R.O.P.
As many inches deep as columns wide.

Classified Rates
.05 line per insertion. Minimum charge .25.

Reading Notices
.05 count line. Set body type; six words to a line.

Contract and Copy Requirements
Advertising of alcoholic beverages accepted.
Contracts must be completed within one year from first insertion.

Mechanical Requirements

Width type page	14-1/2"	Column depth	280 lines
Depth type page	20"	Full page	1960 lines
Single col. width	2"	Double truck	30"
Each add'l col.	2-1/14"	Mats	to full page
Columns to page	7	Plates	mounted

Personnel
Publisher—C. E. Faulk, Jr.

Representatives
Frost, Landis & Kohn

SHREVEPORT (1)
(Caddo Parish)

City Corporate Limits (1930 Govt. Census) ... 76,655
City Zone (1930 Govt. Census) ... 82,162
Trading Zone (1930 Govt. Census) ... 466,712

ABC

JOURNAL

Published Evening except Sunday
Established 1885. Per copy .05.
Rates effective February 1, 1933.
Agency commission 15%; cash discount 2%—15th of following month.

Louisiana—Continued

Personnel
Publisher—D. Attaway.
Editor—D. G. Frantz.
Business Manager—T. R. Grafton.
Circulation Manager—W. D. Green.
General Advertising Manager—H. T. Riddle.
Mechanical Superintendent—S. B. Harper.

Representatives
The John Budd Company.

ABC

TIMES

Published Morning and Sunday
Established 1872. Per copy, daily .05; Sunday .05
Rates effective February 1, 1932.
Card Issued February 1, 1932.

Agency commission 15%; cash discount 2%—15th of following month.

General Advertising — Daily — Sunday

Flat, per line	.09	.13

COLOR
Black and one color, extra ... 25%
Page and half page units only.
Sunday Comic Section
See listing in Newspaper Color, Magazine and Comic Section.

Classifications

Political, per line	.14	.18

Position not sold on classifications.

Position Charges—Extra
Next to reading (if available) ... 15%
Full position (if available) ... 25%
Minimum full position 42 lines.
Specified page ... 25%

Minimum Depth R.O.P.
As many inches deep as columns wide.

Classified Rates
14 line; count six words to the line. Minimum charge .28. Set in 10 pt type .22 count line. Count four words to the line. Set in caps double rate. Cash with order.

Reading Notices
Not sold.

Contract and Copy Requirements
Advertising of alcoholic beverages accepted.
Contracts must be completed within one year from date of contract. If copy on regular schedule is not used within 30 days of date, contract is subject to cancellation at publisher's option. Use of lineage named in contract will not permit renewal within contract year. Advertising subject to approval. Publishers not responsible for cuts, etc., after 30 days from date of use.

Mechanical Requirements

Width type page	14-1/2"	Full page	2353 lines
Depth type page	21"	Double truck	33-7/8"

Note

For lower portion of this page see next frame.

Morning and Evening ..... .15
Sunday ..... .15
Sunday Morning and Week Day Evening ..... .20
Advertisements run at the combination rates must first appear in any paper but succeeding insertions must follow within three days.
Same size ads and same copy. All combinations optional.

COLOR
Black and one color (Full pages only), extra 70%

Sunday Magazine Section
Sunday Comic Section
See listing in Newspaper Color, Magazine and Comic Section.

Classifications

	Morn.	Eve.	Sun	M & E
Amusements, per line, net	.20	.25	.30	.35
Political, per line, net	.15	.25	.25	.30
Public opinion, per line, net	.15	.25	.25	.30

Position Charges—Extra
Next to or following reading 15%
Full position 25%
Minimum for position 42 lines.
Special position at publisher's option. No preferred position sold for medical advertisements.

Minimum Depth R.O.P.
One column 10 lines; 2 columns 40 lines; 3 columns 75 lines; 4 columns 84 lines; 5 or more columns 114 lines. All copy measuring over 250 lines in depth will be set and charged 280 lines.

Classified Rates
Week days, morning and evening combination or Sunday .20 line per insertion. Five average words to the line. All special notices, proposals, bids, one time .25 line; subsequent consecutive times .20 line per insertion. Minimum space 10 lines.

Reading Notices
Morning .50 count line; evening .75 count line; Sunday .75 count line. Minimum two lines each insertion. The word "advertisement" must follow all reading notices and must be included in count lines and charge. Five ordinary words to the line. Readers not accepted for first or editorial page.

Contract and Copy Requirements
Contracts for one year must read "One year from date of contract." If actual service is not begun on a contract within 30 days from its date it will be cancelled and a new contract required at existing rates. Publishers reserve the right to revise or reject at their option any advertising offered which it deems objectionable either in subject matter, phraseology or illustration and to omit or reduce the size of advertisement when mechanical limitations, labor or material shortage make it necessary. Claim for omissions or incorrect insertions will not be considered unless made within 30 days from its publication. Publishers not responsible for imperfect printing from cuts, halftones, etc., or imperfect impression of key numbers or letters or for errors in mats or electros. Tolls on all advertisements sent by telegraph payable by advertiser.

Closing Time
Ads for Sunday should be received by 6:00 p.m. Thursday.

Mechanical Requirements

Width type page 16-1/2"		Column depth	280 lines
Depth type page 20"		Full page	2240 lines
Single col. width 2"		Double truck	34" charged 17 columns
Each add'l col. 2-1/14"		Mats—to full page	
Columns to page 8		Plates—unmounted	

Personnel
Publisher—J. M. Thomson.
Editor—M. Ballard.
Business Manager—J. W. Fanz.
Circulation Manager—P. J. Thomson.
General Advertising Manager—C. W. Hancock.
Mechanical Superintendent—J. Haindel.

Representatives
George A. McDevitt Company.
Atlanta—George M. Kohn, Inc.
Pacific Coast—H. H. Conger Company.
Financial Advertising—Robert S. Farley.

JOURNAL OF COMMERCE

(Tabloid Size)
(Commercial Daily)

Published Morning except Sunday.

Rates effective January 1, 1934.

Agency commission 15%; cash discount 2%—10th of following month.

General Advertising — Per Inch
Open 1.25

CONTRACT RATES
One-twelfth of the contracted space must be used each month for one year.

250 inches	.90
500 inches	.80
1,000 inches	.70
2,000 inches	.60

DAILY INSERTION

3 months, per insertion	1.00
6 months, per insertion	.70
9 months, per insertion	.60
12 months, per insertion	.50

Every-other-day insertions, add 10 inch to above rates.
Twice-a-week insertions, add .20 inch to above rates.
Once-a-week insertions, add .25 inch to above rates.

(Member Bureau of Advertising A.N.P.A.)
Published Morning, Evening and Sunday.

Established—Times Picayune 1837, States 1880
Per copy—Morning .05; evening .03; Sunday .10

Rates effective January 1, 1935.
Card issued December 15, 1934
Card received December 10, 1934

Agency commission 15%; cash discount 2%—20th of following month. Cash discount to advertising agencies only.

Failure to receive checking copies will not entitle agency to cash discount after expiration of discount date.

General Advertising — Per Line
States (evening) ..... .11
Times-Picayune (morning) ..... .30
Times-Picayune-States (Sunday) ..... .30
Morning and Evening ..... .30
Evening and Sunday ..... .38
Morning and Sunday ..... .42

COLOR (Black and One Color)
(Full pages only)

States (evening) ..... .16
Times-Picayune (morning) ..... .37
Times-Picayune-States (Sunday) ..... .37
Morning and Evening ..... .38
Evening and Sunday ..... .42
Morning and Sunday ..... .42

Advertisements run at the combination rates may first appear in any paper but succeeding insertions must follow within three days. Same size advertisement and same copy. All combinations quoted are optional.

Sunday Magazine Section
Sunday Comic Section
See listing in Newspaper Color, Magazine and Comic Section.

Classifications

	Morn.	Eve.	M & E	Sun
Amusements, per line, net	.30	.20	.40	.35
Political, per line, net	.30	.20	.40	.35
Public opinion, per li., net	.30	.20	.40	.35

Position Charges—Extra
Next to or following reading 10%
Full position 30%
Page 2 or 3 (when available) 50%
Minimum for position 42 lines.
Special position at publisher's option.
Special position not sold for medical advertising.

Minimum Depth R.O.P.
1 column 14 lines; 2 columns 28 lines; 3 columns 42 lines; 4 columns 70 lines; 5 columns 98 lines; 6 columns 126 lines; 7 columns 154 lines; 8 columns 175 lines. All copy measuring over 250 lines in depth will be set and charged 300 lines.

Classified Rates
Morning .22 line per insertion; evening .15 line per insertion; Sunday .30 line per insertion. Count five average words to a line. Minimum space two lines. Combination rates listed under General Advertising also apply to classified advertising. Special notices, proposals, bids .35 line per insertion; subsequent consecutive insertions .22 line. Marriage, birth and death notices 1.50 for first insertion; subsequent consecutive insertions 1.00. Minimum space 10 lines.

Reading Notices
Morning 1.00 count line per insertion; evening .50 count line per insertion; Sunday 1.25 count line per insertion. Minimum 2 lines each insertion. The full word "Advertisement" must follow all reading notices and must be included in count of lines and charge. Five ordinary words to the line. Readers not accepted for first, last, editorial or city pages.

Contract and Copy Requirements
Advertising of alcoholic beverages accepted.
Publishers accept no trade contracts, no questionable financial or medical advertising. Publisher reserves the right to revise or reject at his option, any advertisement which is deemed objectionable, either in its subject matter or phraseology or is opposed to the policy of the paper. No advertisement will be cancelled after having appeared in any edition for which it was ordered. Contracts for one year must read: "One year from date of contract." If actual service is not begun on a contract within 30 days from its date it will be cancelled and a new contract required at existing rates. Publisher is not responsible for imperfect printing from cuts, halftones, etc., or imperfect impression of key numbers or letters or for errors in mats or electros. The right is reserved to reject or lighten borders, type or cuts.
Composition: A charge of .25 per inch will be made for advertisements set up and not inserted. Advertisers are allowed one setting and one revision. All revisions after the first will be charged for at cost of labor. A charge will be made for art work and cuts supplied to advertisers.
Tolls on all advertisements sent by telegraph payable by advertiser.

Closing Time
Black and white advertisements for Sunday edition must be received by 6:00 p.m. Thursday.

Mechanical Requirements

Width type page 16-1/2"		Full page	2400 lines
Depth type page 21-7/16"		Double truck	34-1/4" charged 17 full cols.
Single col width 2"		Mats—to full page	
Each add'l col. 2-1/14"		Plates—unmounted	
Columns to page 8			
Column depth	300 lines		

Classified Rates
.05 line per insertion. Minimum charge .25

Reading Notices
.05 count line. Set body type; 10 words to a line.

Contract and Copy Requirements
Advertising of alcoholic beverages accepted.
Contracts must be completed within one year from first insertion.

Mechanical Requirements

Width type page 16-1/2"		Column depth	270 lines
Depth type page 20"		Full page	1950 lines
Single col width 2"		Double truck	30"
Each add'l col. 2-1/14"		Mats—to full page	
Columns to page 7		Plates—mounted	

Personnel
Publisher—C. E. Faulk, Jr.

Representatives
Frost, Landis & Kohn.

SHREVEPORT (1)

(Caddo Parish)

City Corporate Limits (1930 Govt. Census)	74,655
City Zone (1930 Govt. Census)	82,161
Trading Zone (1930 Govt. Census)	443,712

JOURNAL

Published Evening except Sunday.
Established 1895. Per copy .05.
Rates effective February 1, 1935.
Agency commission 15%; cash discount 2%—15th of following month.

General Advertising
Flat, per line ..... .06

COLOR
Black and one color, extra 25%
Page and half page units only.
Separate plates required for each color.

Position Charges—Extra
Next to reading 10%
Full position 25%
Inside position—not sold.

Minimum Depth R.O.P.
As many inches deep as columns wide.

Classified Rates
.02½ word per insertion, five words to line. Set in 10 point 10 count line per insertion, four words to line. Set in caps 50% extra. Cash with order.

Reading Notices
.15 count line. Set body type. Six words to a line.

Contract and Copy Requirements
Advertising of alcoholic beverages accepted.
No contract accepted for more than one year.
Right reserved to cancel contract where copy is not furnished 45 days from date of contract. All copy subject to publisher's approval.

Mechanical Requirements

Width type page 16-1/2"		Column depth	294 lines
Depth type page 21"		Full page	2352 lines
Single col. width 2"		Double truck	33"
Each add'l col. 2-1/14"		Mats—to full page	
Columns to page 8		Plates—unmounted	

COLOR
Black and one color, extra 35%
Page and half page units only
Sunday Comic Section
See listing in Newspaper Color, Magazine and Comic Section.

Classifications
Political, per line ..... .14 .10
Position not sold on classifications.

Position Charges—Extra
Next to reading (if available) 15%
Full position (if available) 25%
Minimum full position 42 lines.
Specified page 25%

Minimum Depth R.O.P.
As many inches deep as columns wide.

Classified Rates
.14 line, count six words to the line. Minimum charge .28. Set in 10 pt type .32 count line. Count four words to the line. Set in caps double rate. Cash with order.

Reading Notices
Not sold.

Contract and Copy Requirements
Advertising of alcoholic beverages accepted.
Contracts must be completed within one year from date of contract. If copy on regular schedule is not used within 30 days of date, contract is subject to cancellation at publisher's option. Use of linecuts named in contract will not permit removal within contract year. Advertising subject to approval. Publishers not responsible for cuts, etc., after 30 days from date of use.

Mechanical Requirements

Width type page 16-1/2"		Full page	2313 lines
Depth type page 21"		Double truck 15-7/8"—	charged 17 cols.
Single col width 2"		Each add'l col. 2-1/14"	Mats—to full page
Columns to page 8		Plates—unmounted	
Column depth	304 lines		

Personnel
Publisher—John D. Ewing.
General Manager—L. A. Mailhes.
Editor—Chas. A. Hazen.
Circulation Manager—E. H. Mapps.
General Advertising Manager—J. B. Mais.

Representatives
The Branham Company.

CIRCULATION EXPLANATION

The percentage figures which appear immediately below some totals for each newspaper represent that per cent of the total net paid circulation which is distributed in that particular zone.
Circulation figures are taken from publisher's semi-annual statement to the Audit Bureau of Circulations, on all papers which are members of the A. B. C. Statements are for the six months' period ending March 31 and September 30, respectively, on newspapers, and for June 30 and December 31 on all other publications. The publisher's statement is a "sworn statement" to the A. B. C. Verified figures will be found in the A. B. C. auditor's report.

LOUISIANA

	Dist. with	Published	CIRCULATION (*) 3 months' statement Report Period Ending	Total Net Paid	City Zone	Retail Trading Zone	City and Retail Trading Zones	All Other
New Orleans—Item	2.95	Eve	ABC 3-31-35	57,702	51,737	9,958	85,795	1,907
					90%	7%	97%	3%
Tribune	4.20	Morn	ABC 3-31-35	39,330	26,446	3,349	29,795	435
					88%	11%	99%	1%
Combined Daily	2.50	M&E	ABC 3-31-35	96,032	78,283	7,487	85,690	2,342
					89%	8%	97%	3%
Sunday Edition	2.40	Sun	ABC 3-31-35	70,733	60,035	5,371	65,406	5,324
					85%	8%	93%	7%
Evening & Sunday	1.95	E&Sun	ABC 3-31-35	128,435	111,775	9,729	121,504	7,931
					87%	7%	94%	6%
Jrl. of Commerce		Morn	Publisher failed to furnish 3-31-35 sworn circ. report					
States	2.99	Eve&Sat	ABC 3-31-35	56,119	49,287	4,903	67,190	2,029
					88%	10%	94%	6%
Saturday Edition	3.50	Sat	ABC 3-31-35	42,418	35,583	4,490	40,253	2,165
					84%	10%	94%	6%
Times-Picayune	2.00	Mor&S	ABC 3-31-35	119,230	61,486	17,228	78,622	37,625
					54%	15%	71%	29%
Comb. Edition	1.87	M&E	ABC 3-31-35	160,369	103,693	23,129	125,823	34,547
					64%	14%	78%	22%
Sunday Edition	1.92	Sun	ABC 3-31-35	156,135	81,099	22,275	103,374	52,761
					52%	14%	66%	34%
Evening & Sunday	1.84	E&Sun	ABC 3-31-35	266,245	123,286	27,178	150,464	53,621
					46%	13%	73%	27%
Morning & Sunday	1.58	M&Sun	ABC 3-31-35	368,394	142,543	39,501	182,044	84,399
					53%	15%	68%	32%
Boston—Leader	20.83	Eve	Sworn 3-31-35	1,300				
Shreveport—Journal	2.33	Eve	ABC 3-31-35	25,786	13,067	10,066	23,133	2,653
					51%	39%	90%	10%
Times	2.19	Morn	ABC 3-31-35	31,166	12,229	16,936	29,165	2,001
					39%	54%	93%	7%
Sunday Edition	2.74	Sun	ABC 3-31-35	43,793	14,578	16,733	31,311	12,482
					34%	38%	72%	28%

Government Exhibit 20

Louisiana—Continued

NEW ORLEANS (62)
(Orleans Parish)
(Commercial Data)

City Corporate Limits (1930 Govt. Census) ... 458,769
City Zone (1930 Govt. Census) ... 475,225
Trading Zone (1930 Govt. Census) ... 843,333

ABC

ITEM
TRIBUNE
SUNDAY ITEM-TRIBUNE

Published—Item—Weekday Evenings.
Tribune—Weekday Mornings.
Item-Tribune—Sunday only.

Established: Item 1877, per copy .03; Tribune 1934, per copy .05; Sunday 1877, per copy .05.

Rates effective December 1, 1933.
Card issued November 27, 1933.

Agency commission 15%; cash discount 2%—15th of following month. Failure to receive checking copies will not entitle agency to cash discount after expiration of discount date. Cash discount to advertising agencies only.

General Advertising — Per line

Evening	.17
Morning	.13
Morning and Evening	.22
Sunday	.18
Sunday Morning and Week Day Evening	.2

Advertisements run at the combination rates may first appear in any paper but succeeding insertions must follow within three days.
Same size ads and same copy. All combinations optional.

COLOR
Black and one color (Full pages only), extra 20%

Sunday Magazine Section
Sunday Comic Section
See listing in Newspaper Color, Magazine and Comic Section.

Classifications

	Morn.	Eve.	Sun.	M & E
Amusements, per line, net	.20	.25	.30	.25
Political, per line, net	.15	.25	.25	.30
Public opinion, per line, net	.15	.25	.25	.30

Position Charges—Extra
Next to or following reading ... 15%
Full position ... 25%
Minimum for position 42 lines
Special position at publisher's option. No preferred position sold for medical advertisements.

Minimum Depth R.O.P.
One column 10 lines; 2 columns 40 lines; 3 columns 75 lines; 4 columns 84 lines; 5 or more columns 113 lines. All copy measuring over 250 lines in depth will be set and charged 250 lines.

Classified Rates
Week days, morning and evening combination or Sunday, .20 line per insertion. Five average words to the line. All special notices, proposals, bids, one time .25 line; subsequent consecutive times .20 line per insertion. Minimum space 10 lines.

Reading Notices
Morning .50 count line; evening .75 count line; Sunday .75 count line. Minimum two lines each insertion. The word "advertisement" must follow all reading notices and must be included in count lines and charge. Five ordinary words to the line. Readers not accepted for first or editorial page.

Contract and Copy Requirements
Contracts for one year must read "One year from date of contract" ... [illegible]

Position Charges—Extra
Top of column, extra per inch ... .10

Classified Rates
1 time rate .10 line; daily for one month .09 line per insertion; daily for 3 months .08 line per insertion; daily for 6 months .07 line per insertion; daily for 12 months .06 line per insertion. Set in black face or caps .05 line extra. Count six words to the line. Minimum charge .25.

Reading Notices
Readers on front page .20 line per insertion. Six words to a line.

Mechanical Requirements

Width type page	10-1/2"	Column depth	210 lines
Depth type page	15"	Full page	1400 lines
Single col. width	1"	Double trucks	22"
Each add'l col.	1-1/15"	Mats—	
Columns to page	6		

Representatives
None.

ABC

TIMES-PICAYUNE
STATES
(Member Bureau of Advertising, A.N.P.A.)
Published Morning, Evening and Sunday.

Established: Times Picayune 1837, States 1880. Per copy: morning .05; evening .03; Sunday .10.

Rates effective January 1, 1935.
Card issued December 15, 1934.
Card received December 10, 1934.

Agency commission 15%; cash discount 2%—20th of following month. Cash discount to advertising agencies only.
Failure to receive checking copies will not entitle agency to cash discount after expiration of discount date.

General Advertising — Per Line

States (evening)	.15
Times-Picayune (morning)	.22
Times-Picayune-States (Sunday)	.30
Morning and Evening	.30
Evening and Sunday	.38
Morning and Sunday	.43

COLOR (Black and One Color)
(Full pages only)

States (evening)	.18
Times-Picayune (morning)	.27
Times-Picayune-States (Sunday)	.37
Morning and Evening	.38
Evening and Sunday	.47
Morning and Sunday	.53

Advertisements run at the combination rates may first appear in any paper but succeeding insertions must follow within three days. Same size advertisement and same copy. All combinations quoted are optional.

Sunday Magazine Section
Sunday Comic Section
See listing in Newspaper Color, Magazine and Comic Section.

Classifications

	Morn.	Eve.	M. & E.	Sun.
Amusements, per line, net	.30	.20	.40	.35
Political, per line, net	.30	.20	.40	.35

Personnel
Business Manager—John F. Tims, Jr.
Manager General Advertising—Roland Ladreyt.

Representatives
Nose, Rothenburg & Jenn, Inc.

RUSTON (10)
(Lincoln Parish)

City Corporate Limits (1930 Govt. Census) ... 4,400
City Zone (Publisher's estimate) ... 5,000
Trading Zone (Publisher's estimate) ... 100,000

LEADER

Published Evening except Sunday.
Established 1905. Per copy .05.
Rates received April 11, 1931.
Agency commission 15%; cash discount 2%—10th of following month.

General Advertising
Flat, per line ... .025

COMBINATION RATE
Daily and weekly (Thursday), per line ... .04

Minimum Depth R.O.P.
As many inches deep as columns wide.

Classified Rates
.05 line per insertion. Minimum charge .25.

Reading Notices
.05 count line. Set body type; six words to a line.

Contract and Copy Requirements
Advertising of alcoholic beverages accepted.
Contracts must be completed within one year from first insertion.

Mechanical Requirements

Width type page	14-1/2"	Column depth	280 lines
Depth type page	10"	Full page	1960 lines
Single col. width	2"	Double trunk	30"
Each add'l col.	3-1/14"	Mats—to full page	
Columns to page	7	Plates—mounted	

Personnel
Publisher—C. E. Faulk, Jr.

Representatives
Frost, Landis & Kohn.

SHREVEPORT (1)
(Caddo Parish)

City Corporate Limits (1930 Govt. Census) ... 76,655
City Zone (1930 Govt. Census) ... 82,163
Trading Zone (1930 Govt. Census) ... 446,712

JOURNAL

Published Evening except Sunday.
Established 1895. Per copy .05.
Rates effective February 1, 1933.
Agency commission 15%; cash discount 2%—15th of following month.

General Advertising

Louisiana—Continued

Personnel
Publisher—D. Attaway.
Editor—D. G. Franiz.
Business Manager—T. R. Grafton.
Circulation Manager—W. H. Green.
General Advertising Manager—H. T. Riddle.
Mechanical Superintendent—S. B. Harper.

Representatives
The John Budd Company.

ABC

TIMES

Published Morning and Sunday.
Established 1872. Per copy, daily .05; Sunday .05
Rates effective September 1, 1935 (Card No. 11)
Card issued July 15, 1935.
Card received August 6, 1935.

Agency commission 15%; cash discount 2%—15th of following month.

General Advertising

	Daily	Sunday
Flat, per line	.11	.12

COLOR

Black and 1 color, per line	.14	.16

Page and 1/2 page units only

Sunday Comic Section
See listing in Newspaper Color, Magazine and Comic Section.

Classifications
Political, per line ... .14 .10
Position not sold on classifications.

Position Charges—Extra
Next to reading (if available) ... 15%
Full position (if available) ... 25%
Minimum full position 42 lines.
Specified page ... 25%

Minimum Depth R.O.P.
As many inches deep as columns wide.

Classified Rates
.20 line per insertion. Cash with order. Count six average words to the line. Minimum charge .60. Classified advertisements set in 10 pt type 40 count line per insertion. Count four average words to the line.

Reading Notices
Not sold.

Contract and Copy Requirements
Advertising of alcoholic beverages accepted.
Contracts must be completed within one year from date. If copy on regular schedule is not used within thirty days of date, contract is subject to cancellation at publisher's option. Use of lineage named in contract will not permit renewal within contract year. Advertising subject to approval. Publishers not responsible for cuts, etc., after thirty days from date of issue.

Closing Time
All advertisements for main section Sunday must be received by noon Saturday.

Mechanical Requirements

Note

For lower portion of this page see next frame.

Advertisements run at the combination rates may first appear in any paper but succeeding insertions must follow within three days.
Same size ads and same copy. All combinations optional.

COLOR
Black and one color (Full pages only), extra ...20%

Sunday Magazine Section
Sunday Comic Section
See listing in Newspaper Color, Magazine and Comic Section.

Classifications	Morn.	Eve.	Sun.	M&E
Amusements, per line, net	.20	.25	.30	.35
Political, per line, net	.15	.25	.25	.30
Public opinion, per line, net	.15	.25	.25	.30

Position Charges—Extra
Next to or following reading 15%
Full position 25%
Minimum for position 42 lines
Special position at publisher's option. No preferred position sold for medical advertisements.

Minimum Depth R.O.P.
One column 10 lines; 2 columns 40 lines; 3 columns 75 lines; 4 columns 85 lines; 5 or more columns 112 lines. All copy measuring over 250 lines in depth will be set and charged 280 lines.

Classified Rates
Week days, morning and evening combination or Sunday .20 line per insertion. Five average words to the line. All special notices, proposals, bids, one time .25 line; subsequent consecutive times .20 line per insertion. Minimum space 10 lines.

Reading Notices
Morning .50 count line; evening .75 count line; Sunday .75 count line. Minimum two lines each insertion. The word "advertisement" must follow all reading notices and must be included in count lines and charge. Five ordinary words to the line. Readers not accepted for first or editorial page.

Contract and Copy Requirements
Contracts for one year must read "One year from date of contract." If actual service is not begun on a contract within 30 days from its date it will be cancelled and a new contract required at existing rates. Publishers reserve the right to revise or reject at their option any advertising offered which it deems objectionable either in subject matter, phraseology or illustration and to omit or reduce the size of advertisement when mechanical limitations, labor or material shortage make it necessary. Claim for omissions or incorrect insertions will not be considered unless made within 30 days from its publication. Publishers not responsible for imperfect printing from cuts, halftones, etc., or imperfect impression of key numbers or letters or for errors in mats or electros. Tolls on all advertisements sent by telegraph payable by advertiser.

Closing Time
Ads for Sunday should be received by 6:00 p.m. Thursday.

Mechanical Requirements
Width type page 13-1/2" — Column depth 280 lines
Depth type page 20" — Full page 5040 lines
Single col. width 2" — Double truck 34"
Each add'l col. 2-1/16" — charged 17 columns
Columns to page 8 — Mats—to full page
Plates—unmounted

Personnel
Publisher—J. M. Thomson.
Editor—M. Ballard.
Business Manager—J. W. Furr.
Circulation Manager—P. J. Thomson.
General Advertising Manager—C. W. Hancock.
Mechanical Superintendent—J. Haindel.

Representatives
George A. McDevitt Company.
Atlanta—George M. Kohn, Inc.
Pacific Coast—E. H. Zeager Company.
Financial Advertising—Robert S. Furlong.

JOURNAL OF COMMERCE

(Tabloid Size)
(Commercial Daily)

Published Morning except Sunday.

Rates effective January 1, 1934.

Agency commission 15%; cash discount 2%—10th of following month.

General Advertising	Per Inch
Open	1.25

CONTRACT RATES
One-twelfth of the contracted space must be used each month for one year.

250 inches	.90
500 inches	.80
1,000 inches	.70
2,000 inches	.60

DAILY INSERTION

3 months, per insertion	1.00
6 months, per insertion	.70
9 months, per insertion	.60
12 months, per insertion	.50

Every-other-day insertions, add .10 inch to above rates.
Twice-a-week insertions, add .20 inch to above rates.
Once-a-week insertions, add .25 inch to above rates.

Established: Times-Picayune 1837. States 1880.
Per copy, morning .05; evening .03; Sunday .10.

Rates effective January 1, 1935
Card issued December 15, 1934
Card received December 20, 1934

Agency commission 15%; cash discount 2%—20th of following month. Cash discount to advertising agencies only.
Failure to receive checking copies will not entitle agency to cash discount after expiration of discount date.

General Advertising	Per Line
States (evening)	.15
Times-Picayune (morning)	.22
Times-Picayune-States (Sunday)	.30
Morning and Evening	.30
Evening and Sunday	.38
Morning and Sunday	.45

COLOR (Black and One Color)
(Full pages only)

States (evening)	.18
Times-Picayune (morning)	.27
Times-Picayune-States (Sunday)	.37
Morning and Evening	.38
Evening and Sunday	.47
Morning and Sunday	.52

Advertisements run at the combination rates may first appear in any paper but succeeding insertions must follow within three days. Same size advertisement and same copy. All combinations quoted are optional.

Sunday Magazine Section
Sunday Comic Section

See listing in Newspaper Color, Magazine and Comic Section.

Classifications	Morn.	Eve.	M. & E.	Sun.
Amusements, per line, net	.30	.30	.40	.35
Political, per line, net	.30	.30	.40	.35
Public opinion, per li., net	.30	.30	.40	.35

Position Charges—Extra
Next to or following reading 10%
Full position 30%
Page 2 or 3 (when available) 50%
Minimum for position 42 lines.
Special position at publisher's option.
Special position not sold for medical advertising.

Minimum Depth R.O.P.
1 column 14 lines; 2 columns 28 lines; 3 columns 69 lines; 4 columns 70 lines; 5 columns 98 lines; 6 columns 126 lines; 7 columns 154 lines; 8 columns 175 lines. All copy measuring over 250 lines in depth will be set and charged 280 lines.

Classified Rates
.30 line per insertion, morning and evening. Count five average words to a line. Minimum space two lines.
Special notices, proposals, bids .36 line per insertion, morning and evening.
Marriage, birth and death notices 1.50 for first insertion; subsequent consecutive insertions 1.05, morning and evening.
Minimum space 10 lines.

Reading Notices
Morning 1.00 count line per insertion; evening .50 count line per insertion; Sunday 1.25 count line per insertion. Minimum 2 lines each insertion. The full word "Advertisement" must follow all reading notices and must be included in count of lines and charge. Five ordinary words to the line. Readers not accepted for first, last, editorial or city pages.

Contract and Copy Requirements
Advertising of alcoholic beverages accepted.
Publishers accept no trade contracts, no questionable financial or medical advertising. Publisher reserves the right to revise or reject at his option, any advertisement which is deemed objectionable, either in its subject matter or phraseology or is opposed to the policy of the paper. No advertisement will be cancelled after having appeared in any edition for which it was ordered. Contracts for one year must read: "One year from date of contract." If actual service is not begun on a contract within 30 days from its date it will be cancelled and a new contract required at existing rates. Publisher is not responsible for imperfect printing from cuts, halftones, etc., or imperfect impression of key numbers or letters or for errors in mats or electros. The right is reserved to reject or lighten borders, type or cuts.
Composition: A charge of .25 per inch will be made for advertisements set up and not inserted. Advertisers are allowed one setting and one revision. All revisions after the first will be charged for at cost of labor. A charge will be made for art work and cuts supplied to advertisers.
Tolls on all advertisements sent by telegraph payable by advertiser.

Closing Time
Black and white advertisements for Sunday edition must be received by 6:00 p.m. Thursday.

Mechanical Requirements
Width type page 16-1/2" — Full page 3480 lines
Depth type page 21-7/16" — Double truck 34-1/4"
Single col. width 2" — charged 17 full cols.
Each add'l col. 2-1/14" — Mats—to full page
Columns to page 8 — Plates—unmounted
Column depth 280 lines

Reading Notices
.05 count line. Set body type; six words to a line.

Contract and Copy Requirements
Advertising of alcoholic beverages accepted.
Contracts must be completed within one year from first insertion.

Mechanical Requirements
Width type page 14-1/2" — Column depth 280 lines
Depth type page 20" — Full page 1960 lines
Single col. width 2" — Double truck 30"
Each add'l col. 2-1/14" — Mats—to full page
Columns to page 7. — Plates—mounted

Personnel
Publisher—C. E. Faulk, Jr.

Representatives
Frost, Landis & Kohn.

SHREVEPORT (1)
(Caddo Parish)

City Corporate Limits (1930 Govt. Census)	76,655
City Zone (1930 Govt. Census)	82,162
Trading Zone (1930 Govt. Census)	146,713

JOURNAL

Published Evening except Sunday.

Established 1895. Per copy .05.

Rates effective February 1, 1932.

Agency commission 15%; cash discount 2%—15th of following month.

General Advertising	
Flat, per line	.06

COLOR

Black and one color, extra	25%

Page and half page units only.
Separate plates required for each color.

Position Charges—Extra
Next to reading 10%
Full position 25%
Island position—not sold.

Minimum Depth R.O.P.
As many inches deep as columns wide.

Classified Rates
.025 word per insertion, five words to line. Set in 10 point. 20 count line per insertion, four words to line. Set in caps 50% extra. Cash with order.

Reading Notices
.15 count line. Set body type. Six words to a line.

Contract and Copy Requirements
Advertising of alcoholic beverages accepted.
No contract accepted for more than one year.
Right reserved to cancel contract where copy is not furnished 45 days from date of contract. All copy subject to publisher's approval.

Mechanical Requirements
Width type page 16-1/2" — Column depth 294 lines
Depth type page 21" — Full page 2352 lines
Single col. width 2" — Double truck 33"
Each add'l col. 2-1/14" — Mats—to full page
Columns to page 8 — Plates—unmounted

See listing in Newspaper Color, Magazine and Comic Section.

Classifications
Political, per line ..... 14 — 18
Position not sold on classifications.

Position Charges—Extra
Next to reading (if available) 15%
Full position (if available) 25%
Minimum full position 42 lines.
Specified page 25%

Minimum Depth R.O.P.
As many inches deep as columns wide.

Classified Rates
.20 line per insertion. Cash with order. Count six average words to the line. Minimum charge .60. Classified advertisements set in 10 pt. type .40 count line per insertion. Count four average words to the line.

Reading Notices.
Not sold.

Contract and Copy Requirements
Advertising of alcoholic beverages accepted.
Contracts must be completed within one year from date. If copy on regular schedule is not used within thirty days of date, contract is subject to cancellation, at publisher's option. Use of lineage named in contract will not permit renewal within contract year. Advertising subject to approval. Publishers not responsible for cuts, etc., after thirty days from date of use.

Closing Time
All advertisements for main section, Sunday must be received by noon Saturday.

Mechanical Requirements
Width type page 16-1/2" — Full page 2353 lines
Depth type page 21" — Double truck 33-7/8"—
Single col. width 2" — charged 17 cols.
Each add'l col. 2-1/14" — Mats—to full page
Columns to page 8 — Plates—unmounted
Column depth 294 lines

Personnel
Editor and Publisher—John D. Ewing.
General Manager—L. A. Mailhes.
Circulation Manager—E. H. Mapps.
General Advertising Manager—J. R. Hale.

Representatives
The Branham Company.

CIRCULATION EXPLANATION

The percentage figures which appear immediately below some totals for each newspaper represent that per cent of the total net paid circulation which is distributed in that particular zone.
Circulation figures are taken from publisher's semi-annual statement to the Audit Bureau of Circulations, on all papers which are members of the A. B. C. Statements are for the six months' period ending March 31 and September 30, respectively, on newspapers, and for June 30 and December 31 on all other publications. The publisher's statement is a "sworn statement" to the A. B. C. Verified figures will be found in the A. B. C. auditor's report.

LOUISIANA	Publication	Frequency	Report Period Ending	Total Net Paid	City Zone	Retail Trading Zone	City and Retail Trading Zones	All Other
New Orleans — Item	2.95	Eve	ABC 3-31-35	57,702	51,737	4,058	55,795	1,907
					90%	7%	97%	3%
— Tribune	4.20	Morn	ABC 3-31-35	30,330	26,546	3,349	29,895	435
					88%	11%	99%	1%
— Combined Daily	3.50	M&E	ABC 3-31-35	88,032	78,283	7,407	85,690	2,343
					89%	8%	97%	3%
— Sunday Edition	2.54	Sun	ABC 3-31-35	70,703	60,038	5,571	65,409	5,294
					85%	8%	93%	7%
— Evening & Sunday	1.95	E&Sun	ABC 3-31-35	128,435	111,775	9,429	121,204	7,231
					87%	7%	94%	6%
— Jrl. of Commerce		Morn	Publisher failed to furnish 3-31-35 sworn circ report					
— States	2.99	Eve&Sat	ABC 3-31-35	50,110	42,287	4,963	47,190	2,920
					84%	10%	94%	6%
— Saturday Edition	3.50	Sat	ABC 3-31-35	42,418	35,563	4,490	40,053	2,365
					84%	10%	94%	6%
— Times-Picayune	2.90	Morn	ABC 3-31-35	110,259	61,406	17,228	78,633	31,627
					56%	15%	71%	29%
— Comb. Edition	1.67	M&E	ABC 3-31-35	190,369	103,693	22,129	125,822	64,547
					54%	14%	78%	22%
— Sunday Edition	1.92	Sun	ABC 3-31-35	156,135	81,000	23,275	103,374	52,761
					52%	14%	66%	34%
— Evening & Sunday	1.84	E&Sun	ABC 3-31-35	204,245	123,386	27,178	150,564	53,681
					60%	13%	73%	27%
— Morning & Sunday	1.58	M&Sun	ABC 3-31-35	266,394	142,903	39,591	182,064	84,328
					53%	15%	68%	32%
Boston — Leader	20.83	Eve	Sworn 3-31-35	1,100				
Shreveport — Journal	2.33	Eve	ABC 3-31-35	25,786	13,067	10,068	23,135	2,651
					51%	39%	90%	10%
— Times	2.67	Morn	ABC 3-31-35	41,086	12,229	16,930	29,185	11,901
					30%	41%	71%	29%
			ABC 6-30-35	43,766	(3 months interim statement)			
— Sunday Edition	2.97	Sun	ABC 3-31-35	43,933	14,578	16,762	31,340	12,453
					34%	38%	71%	28%
			ABC 6-30-35	45,279	(3 months interim statement)			

Government Exhibit 21

9—MISCELLANEOUS

a. Established—The Times-Picayune, 1837—New Orleans States, 1880.

b. Associated Press Service, Universal News Service, International News Service Morning, Evening and Sunday. Exclusive Associated Press Service Morning and Sunday.

c. Subscription price by carrier in New Orleans yearly. Morning and Sunday—$10.40. Morning only—$8.30. Sunday only—$5. Evening only—$6.20. Evening and Sunday—$8.84. Per copy morning 5c. Evening 3c. Sunday 10c.

d. Amusement and Automobile pages Sunday.

e. The Times-Picayune Publishing Co. accepts no trade contracts, no questionable financial or medical advertising.

f. The publisher reserves the right to revise or reject, at his option, any advertisement which is deemed objectionable, either in its subject matter or phraseology, or is opposed to the policy of the paper.

g. No advertisement will be cancelled after having appeared in any edition of the issue for which it was ordered.

h. Contracts for one year must read, "One year from date of contract." If actual service is not begun on a contract within 30 days from its date it will be cancelled and a new contract required at existing rates. The Times-Picayune Publishing Co. is not responsible for imperfect printing from cuts, half-tones, etc., or imperfect impression of key numbers or letters or for errors in mats or electros.

Bills on all advertisements sent by telegraph payable by advertiser.

i. The Times-Picayune Publishing Company,

L. K. Nicholson, President.
Y. P. Nicholson, First Vice-President.
Esmond Phelps, Second Vice-President.
John F. Tims, Jr., Treasurer and Business Manager.
L. F. Blackburn, Assistant Business Manager.
A. F. Murray, Advertising Director.
Roland Ladreyt, Mgr., General Advertising.
N. R. Swayze, Adv. Mgr., New Orleans States.
D. W. Coleman, Circulation Manager.
Geo. W. Healy, Mg. Editor, The Times-Picayune.
Jas. E. Crown, Mg. Editor, New Orleans States.

GENERAL REPRESENTATIVES:

Noee, Rothenburg & Jann, Inc., New York, 10 East 40th St.; Chicago, 360 N. Michigan Blvd.; Detroit, General Motors Bldg.; Atlanta, 1601 Rhodes-Haverty Bldg.; San Francisco, 351 California St.

All rates quoted by the above representatives must conform in every particular with the rates on this card.

(Prepared in conformity with "Standard Rate Card" of American Association of Advertising Agencies.)

Note

For lower portion of this page see next frame.

at his option, any advertisement which is deemed objectionable, either in its subject matter or phraseology, or is opposed to the policy of the paper.

g. No advertisement will be cancelled after having appeared in any edition of the issue for which it was ordered.

h. Contracts for one year must read, "One year from date of contract." If actual service is not begun on a contract within 30 days from its date it will

GENERAL REPRESENTATIVES:

Noee, Rothenburg & Jann, Inc., New York, 10 East 40th St.; Chicago, 360 N. Michigan Blvd.; Detroit, General Motors Bldg.; Atlanta, 1601 Rhodes-Haverty Bldg.; San Francisco, 351 California St.

All rates quoted by the above representatives must conform in every particular with the rates on this card.

(Prepared in conformity with "Standard Rate Card" of American Association of Advertising Agencies.)

NEW ORLEANS
Louisiana

Published by
The Times-Picayune
Publishing Co.

The Times-Picayune
Every Week-Day Morning

New Orleans States
Every Week-Day Evening

The Times-Picayune N. O. States
Every Sunday Morning

Published
See Under Title

Issued Dec. 1, 1937
In Effect Jan. 1, 1938

1—GENERAL ADVERTISING

a. Flat rate per agate line.

	Black and White	Color (full page only) Black and 1 or 2 Colors
Morning	24c	30c
Evening	16c	20c
Sunday	33c	41c
Morning & Evening	32c	40c
Morning & Sunday	46c	57c
Evening & Sunday	41c	51c

b. **DAILY COMIC STRIP ADVERTISING**

35 or 70 lines deep across 6 columns acceptable for daily comic page at 20% above regular black and white rate. Minimum schedule 13 times in 13 weeks.

Alcoholic beverages, proprietary remedies and tobacco advertising not accepted.

c. No time discount.

d. No space discount.

Advertisements run at the combination rates may first appear in any paper but succeeding insertions must follow within three days. Same size advertisement and same copy. All combinations quoted are optional.

e. **SPECIAL POSITIONS** (Publisher's option)

Next to or following reading	10% additional
Special pages	20% additional
Full position	30% additional
Page 2 or 3 (when available)	50% additional

No preferred position sold for medical advertisements.
Minimum for position advertisement, 42 lines.

2—READING NOTICES

a. Readers, R. O. P., but not first, last, editorial or city pages--

	Morning	Evening	Sunday
Flat rate, per count line	$1.00	50c	$1.25

b. Minimum 2 lines each insertion.

The full word "Advertisement" must follow all reading notices and must be included in count of lines and charge. Five ordinary words to the line.

(1310)

3—MECHANICAL REQUIREMENTS

a. Width of column 12 ems pica.

b. Depth of column 300 agate lines.

c. Eight columns to a page.

d. Double track, 17 columns, 34 1-4 inches wide, 21 7-16 inches in depth.

e. Full page type space 16 1-2 inches by 21 7-16 inches.

f. Black and white advertising intended for all editions of Sunday issue must be received by 6 p. m. Thursday.
All copy measuring over 280 lines in depth will be set and charged 300 lines.

g. Half-tone screen required, 85 lines.

h. Can use mats and unmounted 11-point electrotypes. A minimum charge will be made for artwork and cuts supplied to advertisers.
The right is reserved to reject or lighten borders, type or cuts.
Composition: A charge of 25c per inch will be made for advertisements set up and not inserted. Advertisers are allowed one setting and one revision. All revisions after the first will be charged for at cost of labor.

i. Minimum depth R. O. P. 1 col. 1", 2 col. 2", 3 col. 3½", 4 col. 5", 5 col. 7", 6 col. 9", 7 col. 11" 8 col. 12½".

4—SUNDAY COLOR MAGAZINE SECTION

Four colors (black and three primary colors, full page only)—

One page ..... $900 a page

Black and white only, inside pages, page not specified 22c

Minimum black and white R. O. P. advertisements one column, 28 lines deep. Can use plates or mats of standard 2-inch width column sizes.

MAGAZINE SECTION MECHANICAL REQUIREMENTS

Pages are 7 columns, 14 1-4" wide by 272 lines deep—1904 lines to the page. Same mechanical requirements as American Weekly and using same plates. Mats and shells are usable but electros are preferred. Color cuts or mats must bear register mark. All copy and plates must be complete ready for release two weeks previous to insertion date.

5—COMIC SECTION, Sunday

a. RATES (Color Only—One to Three Colors and Black)

One page	$900.00 a page
One half page	$475.00
Strips (70 lines x 7 cols.)	$294.00

Strips 14 and 28 lines across 7 columns at bottom of inside pages available black and white 60c per agate line.

b. All ads must be 140 lines deep across 7 columns or 272 lines deep across 7 columns. 14, 28 or 70 lines deep across 7 columns. No other sizes accepted.

c. All copy for comic section must be complete, ready for release two weeks in advance of publication.

6—CLASSIFICATIONS

a. AMUSEMENTS, POLITICAL and PUBLIC OPINION, flat net per agate line:

Morning	40c
Evening	30c
Sunday	50c
Morning and Evening	50c

b. CLASSIFIED ADVERTISING.

	Morning & Evening	Sunday
Minimum space 2 lines Count 5 average words to line.	32c	33c

NOTICES—Minimum space 10 lines.

c. All Special Notices, Proposals, Bids, 32c per line. Morning and Evening, or Sunday, minimum space 10 lines.
Marriage, Birth and Death Notices, $2.00 for first and alternate insertions. Subsequent consecutive insertions, $1.50 each. Morning and Evening or Sunday, maximum space 25 lines.

d. Contracts will be accepted for a period of one year only, but may be cancelled if copy is not inserted within thirty days from date of contract.

7—COMMISSION AND CASH DISCOUNT

a. Agency commission 15 per cent.

b. Cash discount 2 per cent on the net to advertising agencies only.

c. Payment and cash discount date, 20th of month following service. Bills payable monthly.

Failure to receive checking copies will not entitle agency to cash discount after expiration of discount date.

8—CIRCULATION

a. Member of Audit Bureau of Circulations.

b. Metropolitan newspaper, daily morning, evening and Sunday morning.

c. The largest circulation in the city of New Orleans, the state of Louisiana and the trading territory of New Orleans.

2035

Government Exhibit 22

Note

For lower portion of this page see next frame.

[redacted] The Times-Picayune
[redacted] New Orleans States
[redacted] The [redacted] N. C. [redacted]

[redacted]

	Line	Agate	Col.	Col. Inch	Inch
[redacted]	7	14	2	14	98
[redacted]	8	16	2	16	112
[redacted]	9	18	2	18	126
[redacted]	10	20	2	20	140
[redacted]	11	22	2	22	154
[redacted]	12		2	24	168
[redacted]	13		2	26	182
[redacted]	14		2	28	196

b. [redacted] Volume booked will be accepted by agreement to keep placed in each unit or combination of units of the rate quoted.

c. Advertisements run at the combination rates may first appear in any part but succeeding insertions must follow within three days from the first insertion and same copy.

d. [redacted] Full page, 2400 lines—
1 color and black ..... 30% additional
2 colors and black ..... 35% additional
3 colors and black ..... 50% additional
Less than full page, 600 lines minimum—
1 color and black ..... 25% additional
2 colors and black ..... 30% additional
3 colors and black ..... 35% additional

e. Full run General contract advertisers may supply magazine and comic section in color and black and white, to be printed of their black and white contracts.

f. DAILY CHANGE COPY ADVERTISERS
25 or 75 line drug stores 6 columns available for daily change page at regular black and white rate. Minimum schedule 26 times in 13 weeks. Alcoholic beverages, proprietary remedies and tobacco advertising not accepted.

g. No Wire Discount.

h. SPECIAL POSITIONS (Publisher's option)
Next to or following reading 10% additional
Special page ..... 20% additional
Full position ..... 10% additional
Page 2 or 3 (when available) 20% additional
No preferred position will be omitted advertisements.
Minimum for position advertisements, 600 lines.

2—READING NOTICES

a. Readers, R. O. P., but not first, last, editorial or any pages—

	Morning	Evening	Sunday
Flat rate, per count line	$1.00	80c	$1.25

b. Minimum 3 lines each insertion.

The full word "Advertisement" must follow all reading notices and must be included in count of lines and charge. Five ordinary words to the line.

3—MECHANICAL REQUIREMENTS

a. Width of column 12 ems pica.

b. Depth of column 280 agate lines.

c. Eight columns to a page.

d. Double truck, 17 columns, 34 1-4 inches wide, 21 7-16 inches in depth.

e. Full page type space 14 1-2 inches by 21 7-16 inches.

f. Black and white advertising intended for all editions of Sunday issue must be received by 6 p. m. Thursday.

All copy measuring over 280 lines in depth will be cut and charged 300 lines.

g. Half-tone screen required, 65 line.

h. Can use mats and unmounted 11-point electrotypes. A minimum charge will be made for artwork and cuts supplied to advertisers.

The right is reserved to reject or lighten borders, type or cuts.

Composition: A charge of 25c per inch will be made for advertisements set up and not inserted. Advertisers are allowed one setting and one revision. All revisions after the first will be charged for at cost of labor.

i. Minimum depth R. O. P. 1 col. 1", 2 col. 2", 3 col. 3 1/4", 4 col. 5", 5 col. 7", 6 col. 9", 7 col. 11", 8 col. 13 1/2".

4—SUNDAY COLOR MAGAZINE SECTION

Color (one to three primary colors and black)—

	Full Page	4/7 Page	1/2 Page
One time	$600.00	$420.00	$300.00
6 times 1 year	$570.00	$399.00	$285.00
13 times 1 year	$540.00	$378.00	$270.00
26 times 1 year	$510.00	$357.00	$255.00

Black and White (basic) pages only, page not specified) 5c a line above earned contract rate, R. O. P. Minimum black and white R. O. P. advertisements one column, 28 lines deep. Can use plates or mats of standard 2-inch width column sizes.

MAGAZINE SECTION MECHANICAL REQUIREMENTS

Pages are 7 columns, 14 1-4" wide by 378 lines deep—1964 lines to the page. Same mechanical requirements as American Weekly and using same plates. Halftones and shades are usable but electros are preferred. Color cuts or mats must bear register mark. All copy and plates must be complete, ready for release five weeks previous to insertion date.

2036